

AMENDED IN SENATE APRIL 19, 2007  
AMENDED IN SENATE MARCH 26, 2007

**SENATE BILL**

**No. 998**

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**Introduced by Senator Cox**

February 23, 2007

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An act to amend Sections 25165 and 31155 of, and to add Sections ~~25146.5, 25166.5, 25213.4, 25232.4, 25245.5, 31204, and 31409 to, 25530.1, 31204, and 31400.1 to,~~ the Corporations Code, and to amend Sections 22050, 22105, 22109, and 50123 of, and to add Sections 12332, 12404, ~~17423.2, 17703, 22065, 22169, 22170, 23011.5, 23015, 50318.5,~~ and 50512 to, the Financial Code, relating to business.

LEGISLATIVE COUNSEL'S DIGEST

SB 998, as amended, Cox. Commissioner of Corporations: business regulation.

(1) Existing law provides for the regulation, by the Commissioner of Corporations, of ~~broker-dealers, investment advisors, issuers of securities, franchises, escrow agents,~~ persons engaged in the business of making ~~consumer loans or~~ deferred deposit transactions, finance lenders, ~~residential mortgage lenders,~~ and check sellers, bill payers, and proraters. A willful violation of the laws regulating these individuals is a crime.

This bill would authorize the Commissioner of Corporations, with respect to those individuals, to issue an order *censuring*, suspending ~~or removing any officer, director, 10% or more shareholder, managing member, or general partner from his or her office, as specified, or barring from any position of employment, management, or control, specified licensees or other persons, and to prohibit that person~~

*prohibiting licensees or persons* from participating in the business, as specified, for prescribed cause.

Under existing law, all applicants, except California corporations, applying for qualification of the sale of securities or registration of an offer to sell franchises are required to file with the commissioner a specified form appointing the commissioner as agent for service of process, as specified.

This bill would extend that exception to California limited partnerships and California limited liability companies.

Existing law makes it unlawful to make any untrue statement of a material fact in, among other things, an application filed with the commissioner.

This bill would make it unlawful to knowingly alter, destroy, mutilate, conceal, cover up, falsify, or make a false entry in any record, document, or tangible object with specified intent. The bill would also make it unlawful for any person to knowingly make an untrue statement to the commissioner during the course of licensing, an investigation or examination. The bill would specify that a person violating these provisions is liable for any applicable penalty, as specified. Because a willful violation of these provisions would be a crime, the bill would impose a state-mandated local program.

(2) Existing law, the California Finance Lenders Law, provides for the licensure and regulation of finance lenders, as defined, by the commissioner and exempts specified entities from its provisions. Existing law requires the commissioner to investigate an applicant for licensure and, in the case of an applicant that is a corporation, trust, or association, to investigate its principal officers, directors, and certain other persons. Existing law authorizes the commissioner to deny an application for licensure under specified conditions.

This bill would exempt a person from the California Finance Lenders Law if that person is doing business under the laws of any state relating to, among other things, banks, credit unions, and small business investment companies. ~~The bill would also exempt specified commercial loan transactions with sophisticated borrowers, as defined, from the provisions of the California Finance Lenders Law.~~ The bill would require the commissioner, in investigating applications for licensure submitted by a corporation, trust, limited liability company, or association, to additionally investigate the applicant and its managing members. The bill would also authorize the commissioner to deny an application for licensure if the applicant itself has, within the last 10

years, been convicted or plead nolo contendere to a crime or committed specified acts involving dishonesty, fraud, or deceit.

(3) Existing law, the California Residential Mortgage Lending Act, provides for the licensing and regulation by the commissioner of persons engaged in the business of making residential mortgage loans or servicing those loans. The California Residential Mortgage Lending Act requires a licensee that ceases to engage in activity regulated by the act, and that no longer desire to be licensed, to inform the commissioner in writing, surrender the license, and file other specified information with the commissioner, including a plan for the withdrawal from regulated business that includes a closing audit performed by an independent certified public accountant.

This bill would instead require the plan for withdrawal to include either the closing audit or a review or other procedures prescribed by rule or order of the commissioner.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 25146.5 is added to the Corporations~~  
2     ~~Code, to read:~~  
3     ~~25146.5. (a) Notwithstanding any other provision of law, the~~  
4     ~~commissioner may issue an order suspending or removing a subject~~  
5     ~~person of an issuer from his or her office with the issuer or from~~  
6     ~~control of the issuer and prohibiting the subject person from further~~  
7     ~~participating in any manner in the conduct of the business of the~~  
8     ~~issuer, except with the prior consent of the commissioner, if, after~~  
9     ~~notice and opportunity for a hearing, the commissioner finds the~~  
10    ~~following:~~  
11    ~~(1) (A) The subject person has violated any provision of this~~  
12    ~~division or of any regulation or order issued under this division,~~  
13    ~~or any provision of any other applicable law relating to the business~~  
14    ~~of an issuer; or~~

~~(B) The subject person has engaged or participated in any unsafe or unsound act with respect to the business of the issuer; or~~

~~(C) The subject person has committed or engaged in any act which constitutes a breach of his or her fiduciary duty as a subject person; and~~

~~(2) (A) The issuer has suffered or will probably suffer substantial financial loss or other damage by reason of that violation, act, or breach of fiduciary duty; or~~

~~(B) The interests of the issuer's clients have been or are likely to be seriously prejudiced by reason of the violation, act, or breach of fiduciary duty; or~~

~~(C) The subject person has received financial gain by reason of that violation, act, or breach of fiduciary duty; and~~

~~(3) The violation, act, or breach of fiduciary duty is one involving personal dishonesty on the part of the subject person or one that demonstrates a willful or continuing disregard for the safety or soundness of the issuer's business.~~

~~(b) The commissioner may issue an order suspending or removing a subject person of an issuer from his or her office with the issuer or from control of the issuer and prohibiting the subject person from further participating in any manner in the conduct of the business of the issuer, except with the prior consent of the commissioner, if, after notice and opportunity for a hearing, the commissioner finds the following:~~

~~(1) The subject person's conduct or practice with respect to another issuer or business institution has resulted in substantial financial loss or other damage; and~~

~~(2) The conduct or practice has evidenced personal dishonesty or willful or continuing disregard for the safety and soundness of the other issuer or business institution; and~~

~~(3) The conduct or practice is relevant in that it demonstrates unfitness to continue as a subject person of the issuer.~~

~~(e) The commissioner may immediately issue an order suspending or removing a subject person of an issuer from his or her office with the issuer or from control of the issuer and prohibiting the subject person from further participating in any manner in the conduct of the business of the issuer, except with the prior consent of the commissioner, if the commissioner finds and gives the subject person notice of the following:~~

1 (1) It is necessary for the protection of the issuer or the interests  
2 of the issuer's clients that the commissioner issue the order  
3 immediately, and

4 (2) (A) Any of the factors set forth in paragraphs (1) and (2)  
5 of subdivision (a) and any of the factors set forth in paragraph (3)  
6 of subdivision (b) are true with respect to the subject person; or

7 (B) Any of the factors set forth in paragraphs (1), (2), and (3)  
8 of subdivision (b), and the factor set forth in paragraph (3) of  
9 subdivision (b) are true with respect to the subject person.

10 (d) (1) The commissioner may immediately issue an order  
11 suspending or removing a subject person of an issuer from his or  
12 her office with the issuer or from control of the issuer and  
13 prohibiting the subject person from further participating in any  
14 manner in the conduct of the business of the issuer, except with  
15 the prior consent of the commissioner, if the commissioner finds  
16 and gives the subject person notice of the following:

17 (A) The subject person has been charged in an indictment issued  
18 by a grand jury or in an information, complaint, or similar pleading  
19 issued by a United States attorney, district attorney, or other  
20 governmental official or agency authorized to prosecute crimes;  
21 with a crime that is punishable by imprisonment for a term  
22 exceeding one year and that involves dishonesty or breach of trust;  
23 and

24 (B) The person's continuing to serve as a subject person of the  
25 issuer may pose a material threat to the interest of the issuer's  
26 clients or may threaten to materially impair public confidence in  
27 the issuer. In case the criminal proceedings are terminated other  
28 than by a judgment of conviction the order shall be deemed  
29 rescinded.

30 (2) The commissioner may immediately issue an order  
31 suspending or removing a subject person of an issuer, or a former  
32 subject of an issuer, from his or her office with the issuer or from  
33 control of the issuer, and prohibiting the person from further  
34 participating in any manner in the conduct of the business of the  
35 issuer, except with the prior consent of the commissioner, if the  
36 commissioner finds and gives the subject person notice of the  
37 following:

38 (A) The person has been finally convicted of a crime which is  
39 punishable by imprisonment for a term exceeding one year and  
40 which involves dishonesty or breach of trust; and

1     ~~(B) The person's continuing to serve or resumption of service~~  
2     ~~as a subject person of the issuer may pose a material threat to the~~  
3     ~~interests of the issuer's clients or may threaten to materially impair~~  
4     ~~public confidence in the issuer.~~

5     ~~(3) The fact that a subject person of an issuer charged with a~~  
6     ~~crime involving dishonesty or breach of trust is not finally~~  
7     ~~convicted of that crime shall not preclude the commissioner from~~  
8     ~~issuing an order regarding the subject person pursuant to other~~  
9     ~~provisions of this division.~~

10    ~~(e) Within 30 days after an order is issued pursuant to~~  
11    ~~subdivision (c) or (d), the person to whom the order is issued may~~  
12    ~~file an application for a hearing.~~

13    ~~(f) Any person to whom an order is issued under subdivision~~  
14    ~~(a), (b), (c), or (d) may apply to the commissioner to modify or~~  
15    ~~revoke that order. The commissioner shall not grant that~~  
16    ~~application unless the commissioner finds that it is in the public~~  
17    ~~interest to do so and that it is reasonable to believe that the person~~  
18    ~~will, if and when he or she becomes a subject person of an issuer,~~  
19    ~~comply with all applicable provisions of the applicable law and~~  
20    ~~of any regulation or order issued thereunder.~~

21    ~~(g) (1) It is unlawful for any subject person of an issuer or~~  
22    ~~former subject person of an issuer to whom an order is issued under~~  
23    ~~subdivision (a), (b), (c), or (d) to do any of the following, except~~  
24    ~~with the prior consent of the commissioner, so long as the order~~  
25    ~~is effective:~~

26    ~~(A) To serve or act as a officer, director, 10 percent or more~~  
27    ~~shareholder, managing member, or general partner of any issuer.~~

28    ~~(B) To vote any shares or other securities of an issuer having~~  
29    ~~voting rights for the election of any person as a director of an~~  
30    ~~issuer.~~

31    ~~(C) Directly or indirectly, to solicit, procure, or transfer or~~  
32    ~~attempt to transfer, or vote any proxy, consent, or authorization~~  
33    ~~with respect to any shares or other securities of any issuer having~~  
34    ~~voting rights.~~

35    ~~(D) Otherwise to participate in any manner in the conduct of~~  
36    ~~the business of any issuer.~~

37    ~~(2) Any person who violates paragraph (1) shall, upon~~  
38    ~~conviction, be punished by a fine of not more than ten thousand~~  
39    ~~dollars (\$10,000) or imprisoned in the state prison, or in a county~~  
40    ~~jail not to exceed one year, or by both such fine and imprisonment.~~

1     ~~(3) If the commissioner believes that any person has violated~~  
2     ~~paragraph (1), the commissioner may bring an action in a court of~~  
3     ~~competent jurisdiction petitioning the court to assess that person~~  
4     ~~a civil penalty in an amount as the commissioner may specify;~~  
5     ~~provided, however, that the amount of the civil penalty shall not~~  
6     ~~exceed two thousand five hundred dollars (\$2,500) for each~~  
7     ~~violation or, in the case of a continuing violation, two thousand~~  
8     ~~five hundred dollars (\$2,500) for each day for which the violation~~  
9     ~~continues.~~

10     ~~In determining the amount of a civil penalty to be assessed under~~  
11     ~~this paragraph, the court shall consider the financial resources and~~  
12     ~~good faith of the person charged, the gravity of the violation, the~~  
13     ~~history of previous violations by the person, and such other factors~~  
14     ~~as in the opinion of the court may be relevant.~~

15     ~~(h) A hearing held pursuant to this section shall be private unless~~  
16     ~~the commissioner, in his or her discretion, after fully considering~~  
17     ~~the views of the parties, determines that a public hearing is~~  
18     ~~necessary to protect the public interest.~~

19     ~~(i) For purposes of this section, "subject person" means any~~  
20     ~~officer, director, 10 percent or more shareholder, managing~~  
21     ~~member, or general partner.~~

22     ~~SEC. 2.~~

23     ~~SECTION 1.~~ Section 25165 of the Corporations Code is  
24     ~~amended to read:~~

25     25165. Every applicant for qualification of the sale of securities  
26     under this law or every person filing an application or a notice  
27     under Sections 25100.1, 25101.1, 25102.1, and 25230.1 or a request  
28     for or notice of an exemption from qualification (other than a  
29     California corporation, California limited partnership, California  
30     limited liability company, or a person licensed as a broker-dealer  
31     in this state) shall file with the commissioner, in such form as  
32     prescribed by rule, an irrevocable consent appointing the  
33     commissioner or his or her successor in office to be the applicant's  
34     or person's attorney to receive service of any lawful process in  
35     any noncriminal suit, action or proceeding against the applicant  
36     or person or the successor, executor or administrator thereof, which  
37     arises under this law or any rule or order hereunder after the  
38     consent has been filed, with the same force and validity as if served  
39     personally on the person filing the consent. A person who has filed  
40     such a consent in connection with a previous qualification under

1 this law (or application for a permit under any prior law if the  
2 application under this law states that such consent is still effective),  
3 or in connection with a notice filing under Section 25100.1,  
4 25101.1, 25102.1, and 25230.1, need not file another. Service may  
5 be made by leaving a copy of the process in the office of the  
6 commissioner but it is not effective unless (1) the plaintiff, who  
7 may be the commissioner in a suit, action or proceeding instituted  
8 by him or her, forthwith sends notice of the service and a copy of  
9 the process by registered or certified mail to the defendant or  
10 respondent at the last address on file with the commissioner, and  
11 (2) the plaintiff's affidavit of compliance with this section is filed  
12 in the case on or before the return day of the process, if any, or  
13 within such further time as the court allows.

14 ~~SEC. 3. Section 25166.5 is added to the Corporations Code,~~  
15 ~~to read:~~

16 ~~25166.5. (a) Notwithstanding any other provision of law, it is~~  
17 ~~unlawful for any person to knowingly alter, destroy, mutilate,~~  
18 ~~conceal, cover up, falsify, or make a false entry in any record,~~  
19 ~~document, or tangible object with the intent to impede, obstruct,~~  
20 ~~or influence the administration or enforcement of any provision~~  
21 ~~of this division.~~

22 ~~(b) Notwithstanding any other provision of law, it is unlawful~~  
23 ~~for any person to knowingly make an untrue statement to the~~  
24 ~~commissioner during the course of licensing, an investigation or~~  
25 ~~examination.~~

26 ~~(c) Any person who violates any provision of this section shall~~  
27 ~~be liable for any administrative, civil, or criminal penalty~~  
28 ~~authorized by law.~~

29 ~~SEC. 4. Section 25213.4 is added to the Corporations Code,~~  
30 ~~to read:~~

31 ~~25213.4. (a) Notwithstanding Section 25213 or any other~~  
32 ~~provision of law, the commissioner may issue an order suspending~~  
33 ~~or removing a subject person of a broker-dealer from his or her~~  
34 ~~office with the broker-dealer or from control of the broker-dealer~~  
35 ~~and prohibiting the subject person from further participating in~~  
36 ~~any manner in the conduct of the business of the broker-dealer,~~  
37 ~~except with the prior consent of the commissioner, if, after notice~~  
38 ~~and opportunity for a hearing, the commissioner finds the~~  
39 ~~following:~~



1     ~~(1) (A) The subject person has violated any provision of this~~  
2     ~~division or of any regulation or order issued under this division;~~  
3     ~~or any provision of any other applicable law relating to the business~~  
4     ~~of the broker-dealer; or~~

5     ~~(B) The subject person has engaged or participated in any unsafe~~  
6     ~~or unsound act with respect to the business of the broker-dealer;~~  
7     ~~or~~

8     ~~(C) The subject person has committed or engaged in any act~~  
9     ~~which constitutes a breach of his or her fiduciary duty as a subject~~  
10    ~~person; and~~

11    ~~(2) (A) The broker-dealer has suffered or will probably suffer~~  
12    ~~substantial financial loss or other damage by reason of that~~  
13    ~~violation, act, or breach of fiduciary duty; or~~

14    ~~(B) The interests of the broker-dealer's clients have been or are~~  
15    ~~likely to be seriously prejudiced by reason of the violation, act, or~~  
16    ~~breach of fiduciary duty; or~~

17    ~~(C) The subject person has received financial gain by reason of~~  
18    ~~that violation, act, or breach of fiduciary duty; and~~

19    ~~(3) The violation, act, or breach of fiduciary duty is one~~  
20    ~~involving personal dishonesty on the part of the subject person or~~  
21    ~~one that demonstrates a willful or continuing disregard for the~~  
22    ~~safety or soundness of the broker-dealer's business.~~

23    ~~(b) The commissioner may issue an order suspending or~~  
24    ~~removing a subject person of a broker-dealer from his or her office~~  
25    ~~with the broker-dealer or from control of the broker-dealer and~~  
26    ~~prohibiting the subject person from further participating in any~~  
27    ~~manner in the conduct of the business of the broker-dealer, except~~  
28    ~~with the prior consent of the commissioner, if, after notice and~~  
29    ~~opportunity for a hearing, the commissioner finds the following:~~

30    ~~(1) The subject person's conduct or practice with respect to~~  
31    ~~another broker-dealer or business institution has resulted in~~  
32    ~~substantial financial loss or other damage; and~~

33    ~~(2) The conduct or practice has evidenced personal dishonesty~~  
34    ~~or willful or continuing disregard for the safety and soundness of~~  
35    ~~the other broker-dealer or business institution; and~~

36    ~~(3) The conduct or practice is relevant in that it demonstrates~~  
37    ~~unfitness to continue as a subject person of the broker-dealer.~~

38    ~~(c) The commissioner may immediately issue an order~~  
39    ~~suspending or removing a subject person of a broker-dealer from~~  
40    ~~his or her office with the broker-dealer or from control of the~~

~~broker-dealer and prohibiting the subject person from further participating in any manner in the conduct of the business of the broker-dealer, except with the prior consent of the commissioner, if the commissioner finds and gives the subject person notice of the following:~~

~~(1) It is necessary for the protection of the broker-dealer or the interests of the broker-dealer's clients that the commissioner issue the order immediately; and~~

~~(2) (A) Any of the factors set forth in paragraphs (1) and (2) of subdivision (a) and any of the factors set forth in paragraph (3) of subdivision (b) are true with respect to the subject person; or~~

~~(B) That any of the factors set forth in paragraphs (1), (2), and (3) of subdivision (b), and the factor set forth in paragraph (3) of subdivision (b) are true with respect to the subject person.~~

~~(d) (1) The commissioner may immediately issue an order suspending or removing a subject person of a broker-dealer from his or her office with the broker-dealer or from control of the broker-dealer and prohibiting the subject person from further participating in any manner in the conduct of the business of the broker-dealer, except with the prior consent of the commissioner, if the commissioner finds and gives the subject person notice of the following:~~

~~(A) The subject person has been charged in an indictment issued by a grand jury or in an information, complaint, or similar pleading issued by a United States attorney, district attorney, or other governmental official or agency authorized to prosecute crimes; with a crime that is punishable by imprisonment for a term exceeding one year and that involves dishonesty or breach of trust; and~~

~~(B) The person's continuing to serve as a subject person of the broker-dealer may pose a material threat to the interest of the broker-dealer's clients or may threaten to materially impair public confidence in the broker-dealer. In case the criminal proceedings are terminated other than by a judgment of conviction the order shall be deemed rescinded.~~

~~(2) The commissioner may immediately issue an order suspending or removing a subject person of a broker-dealer, or a former subject of a broker-dealer, from his or her office with the broker-dealer or from control of the broker-dealer and prohibiting the person from further participating in any manner in the conduct~~

1 of the business of the broker-dealer, except with the prior consent  
2 of the commissioner, if the commissioner finds and gives the  
3 subject person notice of the following:

4 (A) The person has been finally convicted of a crime which is  
5 punishable by imprisonment for a term exceeding one year and  
6 which involves dishonesty or breach of trust; and

7 (B) The person's continuing to serve or resumption of service  
8 as a subject person of the broker-dealer may pose a material threat  
9 to the interests of the broker-dealer's clients or may threaten to  
10 materially impair public confidence in the broker-dealer.

11 (3) The fact that a subject person of a broker-dealer charged  
12 with a crime involving dishonesty or breach of trust is not finally  
13 convicted of that crime shall not preclude the commissioner from  
14 issuing an order regarding the subject person pursuant to other  
15 provisions of this division.

16 (e) Within 30 days after an order is issued pursuant to  
17 subdivision (c) or (d), the person to whom the order is issued may  
18 file an application for a hearing.

19 (f) Any person to whom an order is issued under subdivision  
20 (a), (b), (c), or (d) may apply to the commissioner to modify or  
21 rescind that order. The commissioner shall not grant that  
22 application unless the commissioner finds that it is in the public  
23 interest to do so and that it is reasonable to believe that the person  
24 will, if and when he or she becomes a subject person of a  
25 broker-dealer, comply with all applicable provisions of the  
26 applicable law and of any regulation or order issued thereunder.

27 (g) (1) It is unlawful for any subject person of a broker-dealer  
28 or former subject person of a broker-dealer to whom an order is  
29 issued under subdivision (a), (b), (c), or (d) to do any of the  
30 following, except with the prior consent of the commissioner, so  
31 long as the order is effective:

32 (A) To serve or act as a officer, director, 10 percent or more  
33 shareholder, managing member, or general partner of any  
34 broker-dealer.

35 (B) To vote any shares or other securities of a broker-dealer  
36 having voting rights for the election of any person as a director of  
37 a broker-dealer.

38 (C) Directly or indirectly, to solicit, procure, or transfer or  
39 attempt to transfer, or vote any proxy, consent, or authorization

1 with respect to any shares or other securities of any broker-dealer  
2 having voting rights.

3 ~~(D) Otherwise to participate in any manner in the conduct of~~  
4 ~~the business of any broker-dealer.~~

5 ~~(2) Any person who violates paragraph (1) shall, upon~~  
6 ~~conviction, be punished by a fine of not more than ten thousand~~  
7 ~~dollars (\$10,000) or imprisoned in the state prison, or in a county~~  
8 ~~jail not to exceed one year, or by both such fine and imprisonment.~~

9 ~~(3) If the commissioner believes that any person has violated~~  
10 ~~paragraph (1), the commissioner may bring an action in a court of~~  
11 ~~competent jurisdiction petitioning the court to assess that person~~  
12 ~~a civil penalty in an amount as the commissioner may specify;~~  
13 ~~provided, however, that the amount of the civil penalty shall not~~  
14 ~~exceed two thousand five hundred dollars (\$2,500) for each~~  
15 ~~violation or, in the case of a continuing violation, two thousand~~  
16 ~~five hundred dollars (\$2,500) for each day for which the violation~~  
17 ~~continues.~~

18 ~~In determining the amount of a civil penalty to be assessed under~~  
19 ~~this paragraph, the court shall consider the financial resources and~~  
20 ~~good faith of the person charged, the gravity of the violation, the~~  
21 ~~history of previous violations by the person, and such other factors~~  
22 ~~as in the opinion of the court may be relevant.~~

23 ~~(h) A hearing held pursuant to this section shall be private unless~~  
24 ~~the commissioner, in his or her discretion, after fully considering~~  
25 ~~the views of the parties, determines that a public hearing is~~  
26 ~~necessary to protect the public interest.~~

27 ~~(i) For purposes of this section, "subject person" means any~~  
28 ~~officer, director, 10 percent or more shareholder, managing~~  
29 ~~member, or general partner.~~

30 ~~SEC. 5. Section 25232.4 is added to the Corporations Code,~~  
31 ~~to read:~~

32 ~~25232.4. (a) Notwithstanding any other provision of law, the~~  
33 ~~commissioner may issue an order suspending or removing a subject~~  
34 ~~person of an investment adviser from his or her office with the~~  
35 ~~investment adviser or from control of the investment adviser and~~  
36 ~~prohibiting the subject person from further participating in any~~  
37 ~~manner in the conduct of the business of the investment adviser,~~  
38 ~~except with the prior consent of the commissioner, if, after notice~~  
39 ~~and opportunity for a hearing, the commissioner finds the~~  
40 ~~following:~~

1     ~~(1) (A) The subject person has violated any provision of this~~  
2     ~~division or of any regulation or order issued under this division;~~  
3     ~~or any provision of any other applicable law relating to the business~~  
4     ~~of an investment adviser; or~~

5     ~~(B) The subject person has engaged or participated in any unsafe~~  
6     ~~or unsound act with respect to the business of the investment~~  
7     ~~adviser; or~~

8     ~~(C) The subject person has committed or engaged in any act~~  
9     ~~which constitutes a breach of his or her fiduciary duty as a subject~~  
10    ~~person; and~~

11    ~~(2) (A) The investment adviser has suffered or will probably~~  
12    ~~suffer substantial financial loss or other damage by reason of that~~  
13    ~~violation, act, or breach of fiduciary duty; or~~

14    ~~(B) The interests of the investment adviser's clients have been~~  
15    ~~or are likely to be seriously prejudiced by reason of the violation,~~  
16    ~~act, or breach of fiduciary duty; or~~

17    ~~(C) The subject person has received financial gain by reason of~~  
18    ~~that violation, act, or breach of fiduciary duty; and~~

19    ~~(3) The violation, act, or breach of fiduciary duty is one~~  
20    ~~involving personal dishonesty on the part of the subject person or~~  
21    ~~one that demonstrates a willful or continuing disregard for the~~  
22    ~~safety or soundness of the investment adviser's business.~~

23    ~~(b) The commissioner may issue an order suspending or~~  
24    ~~removing a subject person of an investment adviser from his or~~  
25    ~~her office with the investment adviser or from control of the~~  
26    ~~investment adviser and prohibiting the subject person from further~~  
27    ~~participating in any manner in the conduct of the business of the~~  
28    ~~investment adviser, except with the prior consent of the~~  
29    ~~commissioner, if, after notice and opportunity for a hearing, the~~  
30    ~~commissioner finds the following:~~

31    ~~(1) The subject person's conduct or practice with respect to~~  
32    ~~another investment adviser or business institution has resulted in~~  
33    ~~substantial financial loss or other damage; and~~

34    ~~(2) The conduct or practice has evidenced personal dishonesty~~  
35    ~~or willful or continuing disregard for the safety and soundness of~~  
36    ~~the other investment adviser or business institution; and~~

37    ~~(3) The conduct or practice is relevant in that it demonstrates~~  
38    ~~unfitness to continue as a subject person of the investment adviser.~~

39    ~~(e) The commissioner may immediately issue an order~~  
40    ~~suspending or removing a subject person of an investment adviser~~

1 from his or her office with the investment adviser or from control  
2 of the investment adviser and prohibiting the subject person from  
3 further participating in any manner in the conduct of the business  
4 of the investment adviser, except with the prior consent of the  
5 commissioner, if the commissioner finds and gives the subject  
6 person notice of the following:

7 (1) ~~It is necessary for the protection of the investment adviser~~  
8 ~~or the interests of the investment adviser's clients that the~~  
9 ~~commissioner issue the order immediately, and~~

10 (2) (A) ~~Any of the factors set forth in paragraphs (1) and (2)~~  
11 ~~of subdivision (a) and any of the factors set forth in paragraph (3)~~  
12 ~~of subdivision (b) are true with respect to the subject person; or~~

13 (B) ~~Any of the factors set forth in paragraphs (1), (2), and (3)~~  
14 ~~of subdivision (b), and the factor set forth in paragraph (3) of~~  
15 ~~subdivision (b) are true with respect to the subject person.~~

16 (d) (1) ~~The commissioner may immediately issue an order~~  
17 ~~suspending or removing a subject person of an investment adviser~~  
18 ~~from his or her office with the investment adviser or from control~~  
19 ~~of the investment adviser and prohibiting the subject person from~~  
20 ~~further participating in any manner in the conduct of the business~~  
21 ~~of the investment adviser, except with the prior consent of the~~  
22 ~~commissioner, if the commissioner finds and gives the subject~~  
23 ~~person notice of the following:~~

24 (A) ~~The subject person has been charged in an indictment issued~~  
25 ~~by a grand jury or in an information, complaint, or similar pleading~~  
26 ~~issued by a United States attorney, district attorney, or other~~  
27 ~~governmental official or agency authorized to prosecute crimes;~~  
28 ~~with a crime that is punishable by imprisonment for a term~~  
29 ~~exceeding one year and that involves dishonesty or breach of trust;~~  
30 ~~and~~

31 (B) ~~The person's continuing to serve as a subject person of the~~  
32 ~~investment adviser may pose a material threat to the interest of the~~  
33 ~~investment adviser's clients or may threaten to materially impair~~  
34 ~~public confidence in the investment adviser. In case the criminal~~  
35 ~~proceedings are terminated other than by a judgment of conviction~~  
36 ~~the order shall be deemed rescinded.~~

37 (2) ~~The commissioner may immediately issue an order~~  
38 ~~suspending or removing a subject person of an investment adviser~~  
39 ~~or a former subject of an investment adviser, from his or her office~~  
40 ~~with the investment adviser or from control of the investment~~

1 ~~adviser and prohibiting the person from further participating in~~  
2 ~~any manner in the conduct of the business of the investment~~  
3 ~~adviser, except with the prior consent of the commissioner, if the~~  
4 ~~commissioner finds and gives the subject person notice of the~~  
5 ~~following:~~

6 ~~(A) The person has been finally convicted of a crime that is~~  
7 ~~punishable by imprisonment for a term exceeding one year and~~  
8 ~~that involves dishonesty or breach of trust; and~~

9 ~~(B) The person's continuing to serve or resumption of service~~  
10 ~~as a subject person of the investment adviser may pose a material~~  
11 ~~threat to the interests of the investment adviser's clients or may~~  
12 ~~threaten to materially impair public confidence in the investment~~  
13 ~~adviser.~~

14 ~~(3) The fact that a subject person of an investment adviser~~  
15 ~~charged with a crime involving dishonesty or breach of trust is not~~  
16 ~~finally convicted of that crime shall not preclude the commissioner~~  
17 ~~from issuing an order regarding the subject person pursuant to~~  
18 ~~other provisions of this division.~~

19 ~~(e) Within 30 days after an order is issued pursuant to~~  
20 ~~subdivision (c) or (d), the person to whom the order is issued may~~  
21 ~~file an application for a hearing.~~

22 ~~(f) Any person to whom an order is issued under subdivision~~  
23 ~~(a), (b), (c), or (d) may apply to the commissioner to modify or~~  
24 ~~revoke that order. The commissioner shall not grant that~~  
25 ~~application unless the commissioner finds that it is in the public~~  
26 ~~interest to do so and that it is reasonable to believe that the person~~  
27 ~~will, if and when he or she becomes a subject person of an~~  
28 ~~investment adviser, comply with all applicable provisions of the~~  
29 ~~applicable law and of any regulation or order issued thereunder.~~

30 ~~(g) (1) It is unlawful for any subject person of an investment~~  
31 ~~adviser or former subject person of an investment adviser to whom~~  
32 ~~an order is issued under subdivision (a), (b), (c), or (d) to do any~~  
33 ~~of the following, except with the prior consent of the commissioner,~~  
34 ~~so long as the order is effective:~~

35 ~~(A) To serve or act as a officer, director, 10 percent or more~~  
36 ~~shareholder, managing member, or general partner of any~~  
37 ~~investment adviser.~~

38 ~~(B) To vote any shares or other securities of an investment~~  
39 ~~adviser having voting rights, for the election of any person as a~~  
40 ~~director of an investment adviser.~~

1     ~~(C) Directly or indirectly, to solicit, procure, or transfer or~~  
2     ~~attempt to transfer, or vote any proxy, consent, or authorization~~  
3     ~~with respect to any shares or other securities of any investment~~  
4     ~~adviser having voting rights.~~

5     ~~(D) Otherwise to participate in any manner in the conduct of~~  
6     ~~the business of any investment adviser.~~

7     ~~(2) Any person who violates paragraph (1) shall, upon~~  
8     ~~conviction, be punished by a fine of not more than ten thousand~~  
9     ~~dollars (\$10,000) or imprisoned in the state prison, or in a county~~  
10    ~~jail not to exceed one year, or by both such fine and imprisonment.~~

11    ~~(3) If the commissioner believes that any person has violated~~  
12    ~~paragraph (1), the commissioner may bring an action in a court of~~  
13    ~~competent jurisdiction petitioning the court to assess that person~~  
14    ~~a civil penalty in an amount as the commissioner may specify;~~  
15    ~~provided, however, that the amount of the civil penalty shall not~~  
16    ~~exceed two thousand five hundred dollars (\$2,500) for each~~  
17    ~~violation or, in the case of a continuing violation, two thousand~~  
18    ~~five hundred dollars (\$2,500) for each day for which the violation~~  
19    ~~continues.~~

20    ~~In determining the amount of a civil penalty to be assessed under~~  
21    ~~this paragraph, the court shall consider the financial resources and~~  
22    ~~good faith of the person charged, the gravity of the violation, the~~  
23    ~~history of previous violations by the person, and such other factors~~  
24    ~~as in the opinion of the court may be relevant.~~

25    ~~(h) A hearing held pursuant to this section shall be private unless~~  
26    ~~the commissioner, in his or her discretion, after fully considering~~  
27    ~~the views of the parties, determines that a public hearing is~~  
28    ~~necessary to protect the public interest.~~

29    ~~(i) For purposes of this section, “subject person” means any~~  
30    ~~officer, director, 10 percent or more shareholder, managing~~  
31    ~~member, or general partner.~~

32    ~~SEC. 6. Section 25245.5 is added to the Corporations Code,~~  
33    ~~to read:~~

34    ~~25245.5. (a) Notwithstanding any other provision of law, it is~~  
35    ~~unlawful for any person to knowingly alter, destroy, mutilate,~~  
36    ~~conceal, cover up, falsify, or make a false entry in any record,~~  
37    ~~document, or tangible object with the intent to impede, obstruct,~~  
38    ~~or influence the administration or enforcement of any provision~~  
39    ~~of this division.~~



1 ~~(b) Notwithstanding any other provision of law, it is unlawful~~  
2 ~~for any person to knowingly make an untrue statement to the~~  
3 ~~commissioner during the course of licensing, an investigation or~~  
4 ~~examination.~~

5 ~~(e) Any person who violates any provision of this section shall~~  
6 ~~be liable for any administrative, civil, or criminal penalty~~  
7 ~~authorized by law.~~

8 *SEC. 2. Section 25530.1 is added to the Corporations Code,*  
9 *to read:*

10 *25530.1. In any proceeding under Section 25530, the court*  
11 *may prohibit, conditionally or unconditionally, and permanently*  
12 *or for such period of time as it shall determine, any person who*  
13 *violated Section 25401 from acting as an officer or director of any*  
14 *issuer that has securities qualified pursuant to Section 25110, or*  
15 *that has securities or a transaction exempt from qualification*  
16 *pursuant to Section 25100, 25102, or 25103, if the person's*  
17 *conduct demonstrates unfitness to serve as an officer or director*  
18 *of the issuer.*

19 ~~SEC. 7.~~

20 *SEC. 3. Section 31155 of the Corporations Code is amended*  
21 *to read:*

22 *31155. Every applicant for registration of an offer to sell*  
23 *franchises under this law, by other than a California corporation,*  
24 *California limited partnership, or California limited liability*  
25 *company, shall file with the commissioner, in such form as he by*  
26 *rule prescribed, an irrevocable consent appointing the*  
27 *commissioner or his successor in office to be his attorney to receive*  
28 *service of any lawful process in any noncriminal suit, action or*  
29 *proceeding against him or his successor, executor or administrator,*  
30 *which arises under this law or any rule or order hereunder after*  
31 *the consent has been filed, with the same force and validity as if*  
32 *served personally on the person filing the consent. A person who*  
33 *has filed such a consent in connection with a previous registration*  
34 *under this law need not file another. Service may be made by*  
35 *leaving a copy of the process in the office of the commissioner*  
36 *but it is not effective unless (a) the plaintiff, who may be the*  
37 *commissioner in a suit, action or proceeding instituted by him,*  
38 *forthwith sends notice of the service and a copy of the process by*  
39 *registered or certified mail to the defendant or respondent at his*  
40 *last address on file with the commissioner, and (b) the plaintiff's*

1 affidavit of compliance with this section is filed in the case on or  
2 before the return day of the process, if any, or within such further  
3 time as the court allows.

4 ~~SEC. 8.~~

5 *SEC. 4.* Section 31204 is added to the Corporations Code, to  
6 read:

7 31204. (a) Notwithstanding any other provision of law, it is  
8 unlawful for any person to knowingly alter, destroy, mutilate,  
9 conceal, cover up, falsify, or make a false entry in any record,  
10 document, or tangible object with the intent to impede, obstruct,  
11 or influence the administration or enforcement of any provision  
12 of this division.

13 (b) Notwithstanding any other provision of law, it is unlawful  
14 for any person to knowingly make an untrue statement to the  
15 commissioner during the course of licensing, an investigation or  
16 examination.

17 (c) Any person who violates any provision of this section shall  
18 be liable for any administrative, civil, or criminal penalty  
19 authorized by law.

20 ~~SEC. 9.~~ Section 31409 is added to the Corporations Code, to  
21 read:

22 ~~31409. (a) Notwithstanding any other provision of law, the~~  
23 ~~commissioner may issue an order suspending or removing a subject~~  
24 ~~person of a franchisor from his or her office with the franchisor~~  
25 ~~or from control of the franchisor and prohibiting the subject person~~  
26 ~~from further participating in any manner in the conduct of the~~  
27 ~~business of the franchisor, except with the prior consent of the~~  
28 ~~commissioner, if, after notice and opportunity for a hearing, the~~  
29 ~~commissioner finds the following:~~

30 ~~(1) (A) The subject person has violated any provision of this~~  
31 ~~division or of any regulation or order issued under this division,~~  
32 ~~or any provision of any other applicable law relating to the business~~  
33 ~~of a franchisor; or~~

34 ~~(B) The subject person has engaged or participated in any unsafe~~  
35 ~~or unsound act with respect to the business of the franchisor; or~~

36 ~~(C) The subject person has committed or engaged in any act~~  
37 ~~that constitutes a breach of his or her fiduciary duty as a subject~~  
38 ~~person; and~~

1     ~~(2) (A) The franchisor has suffered or will probably suffer~~  
2     ~~substantial financial loss or other damage by reason of that~~  
3     ~~violation, act, or breach of fiduciary duty; or~~

4     ~~(B) The interests of the franchisor's customers have been or are~~  
5     ~~likely to be seriously prejudiced by reason of the violation, act, or~~  
6     ~~breach of fiduciary duty; or~~

7     ~~(C) The subject person has received financial gain by reason of~~  
8     ~~that violation, act, or breach of fiduciary duty; and~~

9     ~~(3) The violation, act, or breach of fiduciary duty is one~~  
10    ~~involving personal dishonesty on the part of the subject person or~~  
11    ~~one that demonstrates a willful or continuing disregard for the~~  
12    ~~safety or soundness of the franchisor's business.~~

13    ~~(b) The commissioner may issue an order suspending or~~  
14    ~~removing a subject person of a franchisor from his or her office~~  
15    ~~with the franchisor or from control of the franchisor and prohibiting~~  
16    ~~the subject person from further participating in any manner in the~~  
17    ~~conduct of the business of the franchisor, except with the prior~~  
18    ~~consent of the commissioner, if, after notice and opportunity for~~  
19    ~~a hearing, the commissioner finds the following:~~

20    ~~(1) The subject person's conduct or practice with respect to~~  
21    ~~another franchisor or business institution has resulted in substantial~~  
22    ~~financial loss or other damage; and~~

23    ~~(2) The conduct or practice has evidenced personal dishonesty~~  
24    ~~or willful or continuing disregard for the safety and soundness of~~  
25    ~~the other franchisor or business institution; and~~

26    ~~(3) The conduct or practice is relevant in that it demonstrates~~  
27    ~~unfitness to continue as a subject person of the franchisor.~~

28    ~~(e) The commissioner may immediately issue an order~~  
29    ~~suspending or removing a subject person of a franchisor from his~~  
30    ~~or her office with the franchisor or from control of the franchisor~~  
31    ~~and prohibiting the subject person from further participating in~~  
32    ~~any manner in the conduct of the business of the franchisor, except~~  
33    ~~with the prior consent of the commissioner, if the commissioner~~  
34    ~~finds and provides the subject person notice of the following:~~

35    ~~(1) It is necessary for the protection of the franchisor or the~~  
36    ~~interests of the franchisor's clients that the commissioner issue the~~  
37    ~~order immediately; and~~

38    ~~(2) (A) Any of the factors set forth in paragraphs (1) and (2)~~  
39    ~~of subdivision (a) and any of the factors set forth in paragraph (3)~~  
40    ~~of subdivision (b) are true with respect to the subject person; or~~

1     ~~(B) Any of the factors set forth in paragraphs (1), (2), and (3)~~  
2     ~~of subdivision (b), and the factor set forth in paragraph (3) of~~  
3     ~~subdivision (b) are true with respect to the subject person.~~

4     ~~(d) (1) The commissioner may immediately issue an order~~  
5     ~~suspending or removing a subject person of a franchisor from his~~  
6     ~~or her office with the franchisor or from control of the franchisor~~  
7     ~~and prohibiting the subject person from further participating in~~  
8     ~~any manner in the conduct of the business of the franchisor, except~~  
9     ~~with the prior consent of the commissioner, if the commissioner~~  
10    ~~finds and provides the subject person notice of the following:~~

11    ~~(A) The subject person has been charged in an indictment issued~~  
12    ~~by a grand jury or in an information, complaint, or similar pleading~~  
13    ~~issued by a United States attorney, district attorney, or other~~  
14    ~~governmental official or agency authorized to prosecute crimes;~~  
15    ~~with a crime that is punishable by imprisonment for a term~~  
16    ~~exceeding one year and that involves dishonesty or breach of trust;~~  
17    ~~and~~

18    ~~(B) The person's continuing to serve as a subject person of the~~  
19    ~~franchisor may pose a material threat to the interest of the~~  
20    ~~franchisor's clients or may threaten to materially impair public~~  
21    ~~confidence in the franchisor. In case the criminal proceedings are~~  
22    ~~terminated other than by a judgment of conviction the order shall~~  
23    ~~be deemed rescinded.~~

24    ~~(2) The commissioner may immediately issue an order~~  
25    ~~suspending or removing a subject person of a franchisor, or a~~  
26    ~~former subject person of a franchisor, from his or her office with~~  
27    ~~the franchisor or from control of the franchisor and prohibiting the~~  
28    ~~person from further participating in any manner in the conduct of~~  
29    ~~the business of the franchisor, except with the prior consent of the~~  
30    ~~commissioner, if the commissioner finds and gives the subject~~  
31    ~~person notice of the following:~~

32    ~~(A) The person has been finally convicted of a crime that is~~  
33    ~~punishable by imprisonment for a term exceeding one year and~~  
34    ~~that involves dishonesty or breach of trust; and~~

35    ~~(B) The person's continuing to serve or resumption of service~~  
36    ~~as a subject person of the franchisor may pose a material threat to~~  
37    ~~the interests of the franchisor's clients or may threaten to materially~~  
38    ~~impair public confidence in the franchisor.~~

39    ~~(3) The fact that a subject person of a licensee charged with a~~  
40    ~~crime involving dishonesty or breach of trust is not finally~~

1 convicted of that crime shall not preclude the commissioner from  
2 issuing an order regarding the subject person pursuant to other  
3 provisions of this division.

4 (e) Within 30 days after an order is issued pursuant to  
5 subdivision (c) or (d), the person to whom the order is issued may  
6 file an application for a hearing.

7 (f) Any person to whom an order is issued under subdivision  
8 (a), (b), (c), or (d) may apply to the commissioner to modify or  
9 rescind that order. The commissioner shall not grant that  
10 application unless the commissioner finds that it is in the public  
11 interest to do so and that it is reasonable to believe that the person  
12 will, if and when he or she becomes a subject person of a  
13 franchisor, comply with all applicable provisions of the applicable  
14 law and of any regulation or order issued thereunder.

15 (g) (1) It is unlawful for any subject person of a franchisor or  
16 former subject person of a franchisor to whom an order is issued  
17 under subdivision (a), (b), (c), or (d) to do any of the following,  
18 except with the prior consent of the commissioner, so long as the  
19 order is effective:

20 (A) To serve or act as a officer, director, 10 percent or more  
21 shareholder, managing member, or general partner of any  
22 franchisor.

23 (B) To vote any shares or other securities of a franchisor having  
24 voting rights, for the election of any person as a director of a  
25 franchisor.

26 (C) Directly or indirectly, to solicit, procure, or transfer or  
27 attempt to transfer, or vote any proxy, consent, or authorization  
28 with respect to any shares or other securities of any franchisor  
29 having voting rights.

30 (D) Otherwise to participate in any manner in the conduct of  
31 the business of any franchisor.

32 (2) Any person who violates paragraph (1) shall, upon  
33 conviction, be punished by a fine of not more than ten thousand  
34 dollars (\$10,000) or imprisoned in the state prison, or in a county  
35 jail not to exceed one year, or by both such fine and imprisonment.

36 (3) If the commissioner believes that any person has violated  
37 paragraph (1), the commissioner may bring an action in a court of  
38 competent jurisdiction petitioning the court to assess that person  
39 a civil penalty in an amount as the commissioner may specify;  
40 provided, however, that the amount of the civil penalty shall not

1 ~~exceed two thousand five hundred dollars (\$2,500) for each~~  
2 ~~violation or, in the case of a continuing violation, two thousand~~  
3 ~~five hundred dollars (\$2,500) for each day for which the violation~~  
4 ~~continues.~~

5 In determining the amount of a civil penalty to be assessed under  
6 this paragraph, the court shall consider the financial resources and  
7 good faith of the person charged, the gravity of the violation, the  
8 history of previous violations by the person, and such other factors  
9 as in the opinion of the court may be relevant.

10 (h) ~~A hearing held pursuant to this section shall be private unless~~  
11 ~~the commissioner, in his or her discretion, after fully considering~~  
12 ~~the views of the parties, determines that a public hearing is~~  
13 ~~necessary to protect the public interest.~~

14 (i) ~~For purposes of this section, “subject person” means any~~  
15 ~~officer, director, 10 percent or more shareholder, managing~~  
16 ~~member, or general partner.~~

17 SEC. 5. *Section 31400.1 is added to the Corporations Code,*  
18 *to read:*

19 *31400.1. In any proceeding under Section 31400, the court*  
20 *may prohibit, conditionally or unconditionally, and permanently*  
21 *or for such period of time as it shall determine, any person who*  
22 *violated Section 31200, 31201, or 31202 from acting as an officer*  
23 *or director of any franchisor if the person’s conduct demonstrates*  
24 *unfitness to serve as an officer or director of the franchisor.*

25 ~~SEC. 10.~~

26 SEC. 6. *Section 12332 is added to the Financial Code, to read:*

27 12332. (a) Notwithstanding any other provision of law, it is  
28 unlawful for any person to knowingly alter, destroy, mutilate,  
29 conceal, cover up, falsify, or make a false entry in any record,  
30 document, or tangible object with the intent to impede, obstruct,  
31 or influence the administration or enforcement of any provision  
32 of this division.

33 (b) Notwithstanding any other provision of law, it is unlawful  
34 for any person to knowingly make an untrue statement to the  
35 commissioner during the course of licensing, an investigation or  
36 examination.

37 (c) Any person who violates any provision of this section shall  
38 be liable for any administrative, civil, or criminal penalty  
39 authorized by law.

40 ~~SEC. 11. Section 12404 is added to the Financial Code, to read:~~

1     ~~12404. (a) Notwithstanding any other provision of law, the~~  
2     ~~commissioner may issue an order suspending or removing a subject~~  
3     ~~person of a licensee from his or her office with the licensee or from~~  
4     ~~control of the licensee and prohibiting the subject person from~~  
5     ~~further participating in any manner in the conduct of the business~~  
6     ~~of the licensee, except with the prior consent of the commissioner,~~  
7     ~~if, after notice and opportunity for a hearing, the commissioner~~  
8     ~~finds the following:~~

9     ~~(1) (A) The subject person has violated any provision of this~~  
10    ~~division or of any regulation or order issued under this division,~~  
11    ~~or any provision of any other applicable law relating to the business~~  
12    ~~of a licensee; or~~

13    ~~(B) The subject person has engaged or participated in any unsafe~~  
14    ~~or unsound act with respect to the business of the licensee; or~~

15    ~~(C) The subject person has committed or engaged in any act~~  
16    ~~which constitutes a breach of his or her fiduciary duty as a subject~~  
17    ~~person; and~~

18    ~~(2) (A) The licensee has suffered or will probably suffer~~  
19    ~~substantial financial loss or other damage by reason of that~~  
20    ~~violation, act, or breach of fiduciary duty; or~~

21    ~~(B) The interests of the licensee's customers have been or are~~  
22    ~~likely to be seriously prejudiced by reason of the violation, act, or~~  
23    ~~breach of fiduciary duty; or~~

24    ~~(C) The subject person has received financial gain by reason of~~  
25    ~~that violation, act, or breach of fiduciary duty; and~~

26    ~~(3) The violation, act, or breach of fiduciary duty is one~~  
27    ~~involving personal dishonesty on the part of the subject person or~~  
28    ~~one that demonstrates a willful or continuing disregard for the~~  
29    ~~safety or soundness of the licensee's business.~~

30    ~~(b) The commissioner may issue an order suspending or~~  
31    ~~removing a subject person of a licensee from his or her office with~~  
32    ~~the licensee or from control of the licensee and prohibiting the~~  
33    ~~subject person from further participating in any manner in the~~  
34    ~~conduct of the business of the licensee, except with the prior~~  
35    ~~consent of the commissioner, if, after notice and opportunity for~~  
36    ~~a hearing, the commissioner finds the following:~~

37    ~~(1) The subject person's conduct or practice with respect to~~  
38    ~~another licensee or business institution has resulted in substantial~~  
39    ~~financial loss or other damage; and~~

1     ~~(2) The conduct or practice has evidenced personal dishonesty~~  
2     ~~or willful or continuing disregard for the safety and soundness of~~  
3     ~~the other licensee or business institution; and~~

4     ~~(3) The conduct or practice is relevant in that it demonstrates~~  
5     ~~unfitness to continue as a subject person of the licensee.~~

6     ~~(e) The commissioner may immediately issue an order~~  
7     ~~suspending or removing a subject person of a licensee from his or~~  
8     ~~her office with the licensee or from control of the licensee and~~  
9     ~~prohibiting the subject person from further participating in any~~  
10    ~~manner in the conduct of the business of the licensee, except with~~  
11    ~~the prior consent of the commissioner, if the commissioner finds~~  
12    ~~and provides the subject person notice of the following:~~

13    ~~(1) It is necessary for the protection of the licensee or the~~  
14    ~~interests of the licensee's clients that the commissioner issue the~~  
15    ~~order immediately, and~~

16    ~~(2) (A) Any of the factors set forth in paragraphs (1) and (2)~~  
17    ~~of subdivision (a) and any of the factors set forth in paragraph (3)~~  
18    ~~of subdivision (b) are true with respect to the subject person; or~~

19    ~~(B) Any of the factors set forth in paragraphs (1), (2), and (3)~~  
20    ~~of subdivision (b), and the factor set forth in paragraph (3) of~~  
21    ~~subdivision (b) are true with respect to the subject person.~~

22    ~~(d) (1) The commissioner may immediately issue an order~~  
23    ~~suspending or removing a subject person of a licensee from his or~~  
24    ~~her office with the licensee or from control of the licensee and~~  
25    ~~prohibiting the subject person from further participating in any~~  
26    ~~manner in the conduct of the business of the licensee, except with~~  
27    ~~the prior consent of the commissioner, if the commissioner finds~~  
28    ~~and gives the subject person notice of the following:~~

29    ~~(A) The subject person has been charged in an indictment issued~~  
30    ~~by a grand jury or in an information, complaint, or similar pleading~~  
31    ~~issued by a United States attorney, district attorney, or other~~  
32    ~~governmental official or agency authorized to prosecute crimes;~~  
33    ~~with a crime which is punishable by imprisonment for a term~~  
34    ~~exceeding one year and which involves dishonesty or breach of~~  
35    ~~trust; and~~

36    ~~(B) The person's continuing to serve as a subject person of the~~  
37    ~~licensee may pose a material threat to the interest of the licensee's~~  
38    ~~clients or may threaten to materially impair public confidence in~~  
39    ~~the licensee. In case the criminal proceedings are terminated other~~



1 ~~than by a judgment of conviction the order shall be deemed~~  
2 ~~rescinded.~~

3 ~~(2) The commissioner may immediately issue an order~~  
4 ~~suspending or removing a subject person of a licensee or a former~~  
5 ~~subject of a licensee, from his or her office with the licensee or~~  
6 ~~from control of the licensee, and prohibiting the person from further~~  
7 ~~participating in any manner in the conduct of the business of the~~  
8 ~~licensee, except with the prior consent of the commissioner, if the~~  
9 ~~commissioner finds and gives the subject person notice of the~~  
10 ~~following:~~

11 ~~(A) The person has been finally convicted of a crime that is~~  
12 ~~punishable by imprisonment for a term exceeding one year and~~  
13 ~~that involves dishonesty or breach of trust; and~~

14 ~~(B) The person's continuing to serve or resumption of service~~  
15 ~~as a subject person of the licensee may pose a material threat to~~  
16 ~~the interests of the licensee's clients or may threaten to materially~~  
17 ~~impair public confidence in the licensee.~~

18 ~~(3) The fact that a subject person of a licensee charged with a~~  
19 ~~crime involving dishonesty or breach of trust is not finally~~  
20 ~~convicted of that crime shall not preclude the commissioner from~~  
21 ~~issuing an order regarding the subject person pursuant to other~~  
22 ~~provisions of this division.~~

23 ~~(e) Within 30 days after an order is issued pursuant to~~  
24 ~~subdivision (c) or (d), the person to whom the order is issued may~~  
25 ~~file an application for a hearing.~~

26 ~~(f) Any person to whom an order is issued under subdivision~~  
27 ~~(a), (b), (c), or (d) may apply to the commissioner to modify or~~  
28 ~~rescind that order. The commissioner shall not grant that~~  
29 ~~application unless the commissioner finds that it is in the public~~  
30 ~~interest to do so and that it is reasonable to believe that the person~~  
31 ~~will, if and when he or she becomes a subject person of a licensee,~~  
32 ~~comply with all applicable provisions of the applicable law and~~  
33 ~~of any regulation or order issued thereunder.~~

34 ~~(g) (1) It is unlawful for any subject person of a licensee or~~  
35 ~~former subject person of a licensee to whom an order is issued~~  
36 ~~under subdivision (a), (b), (c), or (d) to do any of the following,~~  
37 ~~except with the prior consent of the commissioner, so long as the~~  
38 ~~order is effective:~~

39 ~~(A) To serve or act as a officer, director, 10 percent or more~~  
40 ~~shareholder, managing member, or general partner of any licensee.~~

~~(B) To vote any shares or other securities of a licensee having voting rights, for the election of any person as a director of a licensee.~~

~~(C) Directly or indirectly, to solicit, procure, or transfer or attempt to transfer, or vote any proxy, consent, or authorization with respect to any shares or other securities of any licensee having voting rights.~~

~~(D) Otherwise to participate in any manner in the conduct of the business of any licensee.~~

~~(2) Any person who violates paragraph (1) shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000) or imprisoned in the state prison, or in a county jail not to exceed one year, or by both such fine and imprisonment.~~

~~(3) If the commissioner believes that any person has violated paragraph (1), the commissioner may bring an action in a court of competent jurisdiction petitioning the court to assess that person a civil penalty in an amount as the commissioner may specify; provided, however, that the amount of the civil penalty shall not exceed two thousand five hundred dollars (\$2,500) for each violation or, in the case of a continuing violation, two thousand five hundred dollars (\$2,500) for each day for which the violation continues.~~

~~In determining the amount of a civil penalty to be assessed under this paragraph, the court shall consider the financial resources and good faith of the person charged, the gravity of the violation, the history of previous violations by the person, and such other factors as in the opinion of the court may be relevant.~~

~~(h) A hearing held pursuant to this section shall be private unless the commissioner, in his or her discretion, after fully considering the views of the parties, determines that a public hearing is necessary to protect the public interest.~~

~~(i) For purposes of this section, "subject person" means any officer, director, 10 percent or more shareholder, managing member, or general partner.~~

~~SEC. 12. Section 17423.2 is added to the Financial Code, to read:~~

~~17423.2.—(a) Notwithstanding Section 17423 or any other provision of law, the commissioner may issue an order suspending or removing a subject person of a licensee from his or her office with the licensee or from control of the licensee and prohibiting~~

1 the subject person from further participating in any manner in the  
2 conduct of the business of the licensee, except with the prior  
3 consent of the commissioner, if, after notice and an opportunity  
4 for a hearing, the commissioner finds the following:

5 (1) (A) The subject person has violated any provision of this  
6 division or of any regulation or order issued under this division,  
7 or any provision of any other applicable law relating to the business  
8 of a licensee; or

9 (B) The subject person has engaged or participated in any unsafe  
10 or unsound act with respect to the business of the licensee; or

11 (C) The subject person has committed or engaged in any act  
12 which constitutes a breach of his or her fiduciary duty as a subject  
13 person; and

14 (2) (A) The licensee has suffered or will probably suffer  
15 substantial financial loss or other damage by reason of that  
16 violation, act, or breach of fiduciary duty; or

17 (B) The interests of the licensee's customers have been or are  
18 likely to be seriously prejudiced by reason of the violation, act, or  
19 breach of fiduciary duty; or

20 (C) The subject person has received financial gain by reason of  
21 that violation, act, or breach of fiduciary duty; and

22 (3) The violation, act, or breach of fiduciary duty is one  
23 involving personal dishonesty on the part of the subject person or  
24 one that demonstrates a willful or continuing disregard for the  
25 safety or soundness of the licensee's business.

26 (b) The commissioner may issue an order suspending or  
27 removing a subject person of a licensee from his or her office with  
28 the licensee or from control of the licensee and prohibiting the  
29 subject person from further participating in any manner in the  
30 conduct of the business of the licensee, except with the prior  
31 consent of the commissioner, if, after notice and opportunity for  
32 a hearing, the commissioner finds the following:

33 (1) The subject person's conduct or practice with respect to  
34 another licensee or business institution has resulted in substantial  
35 financial loss or other damage; and

36 (2) The conduct or practice has evidenced personal dishonesty  
37 or willful or continuing disregard for the safety and soundness of  
38 the other licensee or business institution; and

39 (3) That the conduct or practice is relevant in that it demonstrates  
40 unfitness to continue as a subject person of the licensee.

~~(e) The commissioner may immediately issue an order suspending or removing a subject person of a licensee from his or her office with the licensee or from control of the licensee and prohibiting the subject person from further participating in any manner in the conduct of the business of the licensee, except with the prior consent of the commissioner, if the commissioner finds and provides the subject person notice of the following:~~

~~(1) It is necessary for the protection of the licensee or the interests of the licensee's clients that the commissioner issue the order immediately, and~~

~~(2) (A) Any of the factors set forth in paragraphs (1) and (2) of subdivision (a) and any of the factors set forth in paragraph (3) of subdivision (b) are true with respect to the subject person; or~~

~~(B) Any of the factors set forth in paragraphs (1), (2), and (3) of subdivision (b), and the factor set forth in paragraph (3) of subdivision (b) are true with respect to the subject person.~~

~~(d) (1) The commissioner may immediately issue an order suspending or removing a subject person of a licensee from his or her office with the licensee or from control of the licensee and prohibiting the subject person from further participating in any manner in the conduct of the business of the licensee, except with the prior consent of the commissioner, if the commissioner finds and gives the subject person notice of the following:~~

~~(A) The subject person has been charged in an indictment issued by a grand jury or in an information, complaint, or similar pleading issued by a United States attorney, district attorney, or other governmental official or agency authorized to prosecute crimes; with a crime that is punishable by imprisonment for a term exceeding one year and that involves dishonesty or breach of trust; and~~

~~(B) The person's continuing to serve as a subject person of the licensee may pose a material threat to the interest of the licensee's clients or may threaten to materially impair public confidence in the licensee. In case the criminal proceedings are terminated other than by a judgment of conviction the order shall be deemed rescinded.~~

~~(2) The commissioner may immediately issue an order suspending or removing a subject person of a licensee or a former subject of a licensee, from his or her office with the licensee or from control of the licensee, and prohibiting the person from further~~

1 participating in any manner in the conduct of the business of the  
2 licensee, except with the prior consent of the commissioner, if the  
3 commissioner finds and gives the subject person notice of the  
4 following:

5 (A) The person has been finally convicted of a crime that is  
6 punishable by imprisonment for a term exceeding one year and  
7 which involves dishonesty or breach of trust; and

8 (B) The person's continuing to serve or resumption of service  
9 as a subject person of the licensee may pose a material threat to  
10 the interests of the licensee's clients or may threaten to materially  
11 impair public confidence in the licensee.

12 (3) The fact that a subject person of a licensee charged with a  
13 crime involving dishonesty or breach of trust is not finally  
14 convicted of that crime shall not preclude the commissioner from  
15 issuing an order regarding the subject person pursuant to other  
16 provisions of this division.

17 (e) Within 30 days after an order is issued pursuant to  
18 subdivision (c) or (d), the person to whom the order is issued may  
19 file an application for a hearing.

20 (f) Any person to whom an order is issued under subdivision  
21 (a), (b), (c), or (d) may apply to the commissioner to modify or  
22 rescind that order. The commissioner shall not grant that  
23 application unless the commissioner finds that it is in the public  
24 interest to do so and that it is reasonable to believe that the person  
25 will, if and when he or she becomes a subject person of a licensee,  
26 comply with all applicable provisions of the applicable law and  
27 of any regulation or order issued thereunder.

28 (g) (1) It is unlawful for any subject person of a licensee or  
29 former subject person of a licensee to whom an order is issued  
30 under subdivision (a), (b), (c), or (d) to do any of the following,  
31 except with the prior consent of the commissioner, so long as the  
32 order is effective:

33 (A) To serve or act as a officer, director, 10 percent or more  
34 shareholder, managing member, or general partner of any licensee.

35 (B) To vote any shares or other securities of a licensee having  
36 voting rights, for the election of any person as a director of a  
37 licensee.

38 (C) Directly or indirectly, to solicit, procure, or transfer or  
39 attempt to transfer, or vote any proxy, consent, or authorization

1 with respect to any shares or other securities of any licensee having  
2 voting rights.

3 ~~(D) Otherwise to participate in any manner in the conduct of~~  
4 ~~the business of any licensee.~~

5 ~~(2) Any person who violates paragraph (1) shall, upon~~  
6 ~~conviction, be punished by a fine of not more than ten thousand~~  
7 ~~dollars (\$10,000) or imprisoned in the state prison, or in a county~~  
8 ~~jail not to exceed one year, or by both such fine and imprisonment.~~

9 ~~(3) If the commissioner believes that any person has violated~~  
10 ~~paragraph (1), the commissioner may bring an action in a court of~~  
11 ~~competent jurisdiction petitioning the court to assess that person~~  
12 ~~a civil penalty in an amount as the commissioner may specify;~~  
13 ~~provided, however, that the amount of the civil penalty shall not~~  
14 ~~exceed two thousand five hundred dollars (\$2,500) for each~~  
15 ~~violation or, in the case of a continuing violation, two thousand~~  
16 ~~five hundred dollars (\$2,500) for each day for which the violation~~  
17 ~~continues.~~

18 ~~In determining the amount of a civil penalty to be assessed under~~  
19 ~~this paragraph, the court shall consider the financial resources and~~  
20 ~~good faith of the person charged, the gravity of the violation, the~~  
21 ~~history of previous violations by the person, and such other factors~~  
22 ~~as in the opinion of the court may be relevant.~~

23 ~~(h) A hearing held pursuant to this section shall be private unless~~  
24 ~~the commissioner, in his or her discretion, after fully considering~~  
25 ~~the views of the parties, determines that a public hearing is~~  
26 ~~necessary to protect the public interest.~~

27 ~~(i) For purposes of this section, “subject person” means any~~  
28 ~~officer, director, 10 percent or more shareholder, managing~~  
29 ~~member, or general partner.~~

30 *SEC. 7. Section 12404 is added to the Financial Code, to read:*

31 *12404. (a) The commissioner may, after appropriate notice*  
32 *and opportunity for hearing, by order, censure or suspend for a*  
33 *period not exceeding 12 months, or bar from any position of*  
34 *employment, management, or control any licensee, any nonprofit*  
35 *community service organization subject to Section 12104, or any*  
36 *other person, if the commissioner finds either of the following:*

37 *(1) That the censure, suspension, or bar is in the public interest*  
38 *and that the person has committed or caused a violation of this*  
39 *division or rule or order of the commissioner, which violation was*  
40 *either known or should have been known by the person committing*

1 *or causing it or has caused material damage to the licensee,*  
2 *nonprofit community service organization, or to the public.*

3 *(2) That the person has been convicted of or pleaded nolo*  
4 *contendere to any crime, or has been held liable in any civil action*  
5 *by final judgment, or any administrative judgment by any public*  
6 *agency, if that crime or civil or administrative judgment involved*  
7 *any offense involving dishonesty, fraud, or deceit, or any other*  
8 *offense reasonably related to the qualifications, functions, or duties*  
9 *of a person engaged in the business in accordance with the*  
10 *provisions of this division.*

11 *(b) Within 15 days from the date of a notice of intention to issue*  
12 *an order pursuant to subdivision (a), the person may request a*  
13 *hearing under the Administrative Procedure Act (Chapter 4.5*  
14 *(commencing with Section 11400) of Division 3 of Title 2 of the*  
15 *Government Code). Upon receipt of a request, the matter shall be*  
16 *set for hearing to commence within 30 days after such receipt*  
17 *unless the person subject to this division consents to a later date.*  
18 *If no hearing is requested within 15 days after the mailing or*  
19 *service of such notice and none is ordered by the commissioner,*  
20 *the failure to request a hearing shall constitute a waiver of the*  
21 *right to a hearing.*

22 *(c) Upon receipt of a notice of intention to issue an order*  
23 *pursuant to this section, the person who is the subject of the*  
24 *proposed order is immediately prohibited from engaging in any*  
25 *activities subject to licensure or exempt from licensure under*  
26 *Section 12104 of the law.*

27 *(d) Persons suspended or barred under this section are*  
28 *prohibited from participating in any business activity of a licensee*  
29 *or a person exempt from licensure under Section 12104 and from*  
30 *engaging in any business activity on the premises where a licensee*  
31 *or a person exempt from licensure under Section 12104 is*  
32 *conducting business.*

33 ~~SEC. 13.~~

34 *SEC. 8. Section 17703 is added to the Financial Code, to read:*

35 *17703. (a) Notwithstanding any other provision of law, it is*  
36 *unlawful for any person to knowingly alter, destroy, mutilate,*  
37 *conceal, cover up, falsify, or make a false entry in any record,*  
38 *document, or tangible object with the intent to impede, obstruct,*  
39 *or influence the administration or enforcement of any provision*  
40 *of this division.*

1 (b) Notwithstanding any other provision of law, it is unlawful  
2 for any person to knowingly make an untrue statement to the  
3 commissioner during the course of licensing, an investigation or  
4 examination.

5 (c) Any person who violates any provision of this section shall  
6 be liable for any administrative, civil, or criminal penalty  
7 authorized by law.

8 ~~SEC. 14.~~

9 *SEC. 9.* Section 22050 of the Financial Code is amended to  
10 read:

11 22050. (a) This division does not apply to any person doing  
12 business under any law of any state or of the United States relating  
13 to banks, trust companies, savings and loan associations, insurance  
14 premium finance agencies, credit unions, small business investment  
15 companies, California business and industrial development  
16 corporations, or licensed pawnbrokers.

17 (b) This division does not apply to a check casher who holds a  
18 valid permit issued pursuant to Section 1789.37 of the Civil Code  
19 when acting under the authority of that permit, and shall not apply  
20 to a person holding a valid license issued pursuant to Section 23005  
21 of the Financial Code when acting under the authority of that  
22 license.

23 (c) This division does not apply to a college or university making  
24 a loan for the purpose of permitting a person to pursue a program  
25 or course of study leading to a degree or certificate.

26 (d) This division does not apply to a broker-dealer acting  
27 pursuant to a certificate then in effect and issued pursuant to  
28 Section 25211 of the Corporations Code.

29 (e) This division does not apply to any person who makes no  
30 more than one loan in a 12-month period as long as that loan is a  
31 commercial loan as defined in Section 22502.

32 (f) This division does not apply to any public corporation as  
33 defined in Section 67510 of the Government Code, any public  
34 entity other than the state as defined in Section 811.2 of the  
35 Government Code, or any agency of any one or more of the  
36 foregoing, when making any loan so long as the public corporation,  
37 public entity, or agency of any one or more of the foregoing  
38 complies with all applicable federal and state laws and regulations.

39 (g) This section shall become operative December 31, 2004.



1     ~~SEC. 15.~~ Section 22065 is added to the Financial Code, to  
2 read:

3     ~~22065.~~ (a) This division shall not apply to a bona fide debt  
4 financing transaction as long as all of the following requirements  
5 are met:

6     ~~(1) The loan is a commercial loan, as defined in Section 22502.~~

7     ~~(2) The borrower is a sophisticated borrower, as defined in~~  
8 ~~subdivision (b).~~

9     ~~(3) The debt financing transaction is for an amount of at least~~  
10 ~~one million dollars (\$1,000,000), exclusive of fees and expenses.~~

11     ~~(b) For purposes of this section, a sophisticated borrower means~~  
12 ~~either of the following:~~

13     ~~(1) An employee benefit plan within the meaning of the~~  
14 ~~Employee Retirement Income Security Act.~~

15     ~~(2) A charitable organization, corporation, limited liability~~  
16 ~~company, trust, or partnership with assets exceeding five million~~  
17 ~~dollars (\$5,000,000).~~

18     ~~SEC. 16.~~

19     ~~SEC. 10.~~ Section 22105 of the Financial Code is amended to  
20 read:

21     22105. Upon the filing of an application pursuant to Section  
22 22101 and the payment of the fees, the commissioner shall  
23 investigate the applicant and its general partners and persons  
24 owning or controlling, directly or indirectly, 10 percent or more  
25 of the outstanding interests or any person responsible for the  
26 conduct of the applicant's lending activities in this state, if the  
27 applicant is a partnership. If the applicant is a corporation, trust,  
28 limited liability company, or association, including an  
29 unincorporated organization, the commissioner shall investigate  
30 the applicant, its principal officers, directors, managing members,  
31 and persons owning or controlling, directly or indirectly, 10 percent  
32 or more of the outstanding equity securities or any person  
33 responsible for the conduct of the applicant's lending activities in  
34 this state. Upon the filing of an application pursuant to Section  
35 22102 and the payment of the fees, the commissioner shall  
36 investigate the person responsible for the lending activity of the  
37 licensee at the new location described in the application. The  
38 investigation may be limited to information that was not included  
39 in prior applications filed pursuant to this division. If the  
40 commissioner determines that the applicant has satisfied this

1 division and does not find facts constituting reasons for denial  
2 under Section 22109, the commissioner shall issue and deliver a  
3 license to the applicant.

4 For the purposes of this section, “principal officers” shall mean  
5 president, chief executive officer, treasurer, and chief financial  
6 officer, as may be applicable, and any other officer with direct  
7 responsibility for the conduct of the applicant’s lending activities  
8 within the state.

9 ~~SEC. 17.~~

10 *SEC. 11.* Section 22109 of the Financial Code is amended to  
11 read:

12 22109. (a) Upon reasonable notice and opportunity to be heard,  
13 the commissioner may deny the application for any of the following  
14 reasons:

15 (1) A false statement of a material fact has been made in the  
16 application.

17 (2) The applicant or an officer, director, general partner, person  
18 responsible for the applicant’s lending activities in this state, or  
19 person owning or controlling, directly or indirectly, 10 percent or  
20 more of the outstanding interests or equity securities of the  
21 applicant has, within the last 10 years, been convicted of or pleaded  
22 nolo contendere to a crime, or committed an act involving  
23 dishonesty, fraud, or deceit, if the crime or act is substantially  
24 related to the qualifications, functions, or duties of a person  
25 engaged in business in accordance with this division.

26 (3) The applicant or an officer, director, general partner, person  
27 responsible for the applicant’s lending activities in this state, or  
28 person owning or controlling, directly or indirectly, 10 percent or  
29 more of the outstanding interests or equity securities of the  
30 applicant has violated any provision of this division or the rules  
31 thereunder or any similar regulatory scheme of the State of  
32 California or a foreign jurisdiction.

33 (b) The application shall be considered withdrawn within the  
34 meaning of this section if the applicant fails to respond to a written  
35 notification of a deficiency in the application within 90 days of  
36 the date of the notification.

37 (c) The commissioner shall, within 60 days from the filing of  
38 a full and complete application for a license with the fees, either  
39 issue a license or file a statement of issues prepared in accordance

1 with Chapter 5 (commencing with Section 11500) of Part 1 of  
2 Division 3 of Title 2 of the Government Code.

3 ~~SEC. 18. Section 22169 is added to the Financial Code, to read:~~

4 ~~22169. (a) Notwithstanding Sections 22109 and 22168 or any~~  
5 ~~other provision of law, the commissioner may issue an order~~  
6 ~~suspending or removing a subject person of a licensee from his or~~  
7 ~~her office with the licensee or from control of the licensee and~~  
8 ~~prohibiting the subject person from further participating in any~~  
9 ~~manner in the conduct of the business of the licensee, except with~~  
10 ~~the prior consent of the commissioner, if, after notice and~~  
11 ~~opportunity for a hearing, the commissioner finds the following:~~

12 ~~(1) (A) The subject person has violated any provision of this~~  
13 ~~division or of any regulation or order issued under this division,~~  
14 ~~or any provision of any other applicable law relating to the business~~  
15 ~~of a licensee; or~~

16 ~~(B) The subject person has engaged or participated in any unsafe~~  
17 ~~or unsound act with respect to the business of the licensee; or~~

18 ~~(C) The subject person has committed or engaged in any act~~  
19 ~~which constitutes a breach of his or her fiduciary duty as a subject~~  
20 ~~person; and~~

21 ~~(2) (A) The licensee has suffered or will probably suffer~~  
22 ~~substantial financial loss or other damage by reason of that~~  
23 ~~violation, act, or breach of fiduciary duty; or~~

24 ~~(B) The interests of the licensee's customers have been or are~~  
25 ~~likely to be seriously prejudiced by reason of the violation, act, or~~  
26 ~~breach of fiduciary duty; or~~

27 ~~(C) The subject person has received financial gain by reason of~~  
28 ~~that violation, act, or breach of fiduciary duty; and~~

29 ~~(3) The violation, act, or breach of fiduciary duty is one~~  
30 ~~involving personal dishonesty on the part of the subject person or~~  
31 ~~one that demonstrates a willful or continuing disregard for the~~  
32 ~~safety or soundness of the licensee's business.~~

33 ~~(b) The commissioner may issue an order suspending or~~  
34 ~~removing a subject person of a licensee from his or her office with~~  
35 ~~the licensee or from control of the licensee and prohibiting the~~  
36 ~~subject person from further participating in any manner in the~~  
37 ~~conduct of the business of the licensee, except with the prior~~  
38 ~~consent of the commissioner, if, after notice and opportunity for~~  
39 ~~a hearing, the commissioner finds the following:~~

1     ~~(1) The subject person's conduct or practice with respect to~~  
2     ~~another licensee or business institution has resulted in substantial~~  
3     ~~financial loss or other damage; and~~

4     ~~(2) The conduct or practice has evidenced personal dishonesty~~  
5     ~~or willful or continuing disregard for the safety and soundness of~~  
6     ~~the other licensee or business institution; and~~

7     ~~(3) The conduct or practice is relevant in that it demonstrates~~  
8     ~~unfitness to continue as a subject person of the licensee.~~

9     ~~(e) The commissioner may immediately issue an order~~  
10    ~~suspending or removing a subject person of a licensee from his or~~  
11    ~~her office with the licensee or from control of the licensee and~~  
12    ~~prohibiting the subject person from further participating in any~~  
13    ~~manner in the conduct of the business of the licensee, except with~~  
14    ~~the prior consent of the commissioner, if the commissioner finds~~  
15    ~~and provides the subject person notice of the following:~~

16    ~~(1) It is necessary for the protection of the licensee or the~~  
17    ~~interests of the licensee's clients that the commissioner issue the~~  
18    ~~order immediately, and~~

19    ~~(2) (A) Any of the factors set forth in paragraphs (1) and (2)~~  
20    ~~of subdivision (a) and any of the factors set forth in paragraph (3)~~  
21    ~~of subdivision (b) are true with respect to the subject person; or~~

22    ~~(B) Any of the factors set forth in paragraphs (1), (2), and (3)~~  
23    ~~of subdivision (b), and the factor set forth in paragraph (3) of~~  
24    ~~subdivision (b) are true with respect to the subject person.~~

25    ~~(d) (1) The commissioner may immediately issue an order~~  
26    ~~suspending or removing a subject person of a licensee from his or~~  
27    ~~her office with the licensee or from control of the licensee and~~  
28    ~~prohibiting the subject person from further participating in any~~  
29    ~~manner in the conduct of the business of the licensee, except with~~  
30    ~~the prior consent of the commissioner, if the commissioner finds~~  
31    ~~and gives the subject person notice of the following:~~

32    ~~(A) The subject person has been charged in an indictment issued~~  
33    ~~by a grand jury or in an information, complaint, or similar pleading~~  
34    ~~issued by a United States attorney, district attorney, or other~~  
35    ~~governmental official or agency authorized to prosecute crimes;~~  
36    ~~with a crime that is punishable by imprisonment for a term~~  
37    ~~exceeding one year and that involves dishonesty or breach of trust;~~  
38    ~~and~~

39    ~~(B) The person's continuing to serve as a subject person of the~~  
40    ~~licensee may pose a material threat to the interest of the licensee's~~

1 ~~clients or may threaten to materially impair public confidence in~~  
2 ~~the licensee. In case the criminal proceedings are terminated other~~  
3 ~~than by a judgment of conviction the order shall be deemed~~  
4 ~~rescinded.~~

5 ~~(2) The commissioner may immediately issue an order~~  
6 ~~suspending or removing a subject person of a licensee, or a former~~  
7 ~~subject of a licensee, from his or her office with the licensee or~~  
8 ~~from control of the licensee and prohibiting the person from further~~  
9 ~~participating in any manner in the conduct of the business of the~~  
10 ~~licensee, except with the prior consent of the commissioner, if the~~  
11 ~~commissioner finds and gives the subject person notice of the~~  
12 ~~following:~~

13 ~~(A) The person has been finally convicted of a crime that is~~  
14 ~~punishable by imprisonment for a term exceeding one year and~~  
15 ~~that involves dishonesty or breach of trust; and~~

16 ~~(B) The person's continuing to serve or resumption of service~~  
17 ~~as a subject person of the licensee may pose a material threat to~~  
18 ~~the interests of the licensee's clients or may threaten to materially~~  
19 ~~impair public confidence in the licensee.~~

20 ~~(3) The fact that a subject person of a licensee charged with a~~  
21 ~~crime involving dishonesty or breach of trust is not finally~~  
22 ~~convicted of that crime shall not preclude the commissioner from~~  
23 ~~issuing an order regarding the subject person pursuant to other~~  
24 ~~provisions of this division.~~

25 ~~(e) Within 30 days after an order is issued pursuant to~~  
26 ~~subdivision (c) or (d), the person to whom the order is issued may~~  
27 ~~file an application for a hearing.~~

28 ~~(f) Any person to whom an order is issued under subdivision~~  
29 ~~(a), (b), (c), or (d) may apply to the commissioner to modify or~~  
30 ~~revoke that order. The commissioner shall not grant that~~  
31 ~~application unless the commissioner finds that it is in the public~~  
32 ~~interest to do so and that it is reasonable to believe that the person~~  
33 ~~will, if and when he or she becomes a subject person of a licensee,~~  
34 ~~comply with all applicable provisions of the applicable law and~~  
35 ~~of any regulation or order issued thereunder.~~

36 ~~(g) (1) It is unlawful for any subject person of a licensee or~~  
37 ~~former subject person of a licensee to whom an order is issued~~  
38 ~~under subdivision (a), (b), (c), or (d) to do any of the following,~~  
39 ~~except with the prior consent of the commissioner, so long as the~~  
40 ~~order is effective:~~

1     ~~(A) To serve or act as a officer, director, 10 percent or more~~  
2 ~~shareholder, managing member, or general partner of any licensee.~~

3     ~~(B) To vote any shares or other securities of a licensee having~~  
4 ~~voting rights, for the election of any person as a director of a~~  
5 ~~licensee.~~

6     ~~(C) Directly or indirectly, to solicit, procure, or transfer or~~  
7 ~~attempt to transfer, or vote any proxy, consent, or authorization~~  
8 ~~with respect to any shares or other securities of any licensee having~~  
9 ~~voting rights.~~

10    ~~(D) Otherwise to participate in any manner in the conduct of~~  
11 ~~the business of any licensee.~~

12    ~~(2) Any person who violates paragraph (1) shall, upon~~  
13 ~~conviction, be punished by a fine of not more than ten thousand~~  
14 ~~dollars (\$10,000) or imprisoned in the state prison, or in a county~~  
15 ~~jail not to exceed one year, or by both such fine and imprisonment.~~

16    ~~(3) If the commissioner believes that any person has violated~~  
17 ~~paragraph (1), the commissioner may bring an action in a court of~~  
18 ~~competent jurisdiction petitioning the court to assess that person~~  
19 ~~a civil penalty in an amount as the commissioner may specify;~~  
20 ~~provided, however, that the amount of the civil penalty shall not~~  
21 ~~exceed two thousand five hundred dollars (\$2,500) for each~~  
22 ~~violation or, in the case of a continuing violation, two thousand~~  
23 ~~five hundred dollars (\$2,500) for each day for which the violation~~  
24 ~~continues.~~

25    ~~In determining the amount of a civil penalty to be assessed under~~  
26 ~~this paragraph, the court shall consider the financial resources and~~  
27 ~~good faith of the person charged, the gravity of the violation, the~~  
28 ~~history of previous violations by the person, and such other factors~~  
29 ~~as in the opinion of the court may be relevant.~~

30    ~~(h) A hearing held pursuant to this section shall be private unless~~  
31 ~~the commissioner, in his or her discretion, after fully considering~~  
32 ~~the views of the parties, determines that a public hearing is~~  
33 ~~necessary to protect the public interest.~~

34    ~~(i) For purposes of this section, “subject person” means any~~  
35 ~~officer, director, 10 percent or more shareholder, managing~~  
36 ~~member, or general partner.~~

37    ~~SEC. 12. Section 22169 is added to the Financial Code, to~~  
38 ~~read:~~

39    ~~22169. (a) The commissioner may, after appropriate notice~~  
40 ~~and opportunity for hearing, by order, censure or suspend for a~~

1 *period not exceeding 12 months, or bar from any position of*  
2 *employment, management, or control any finance lender, broker,*  
3 *or any other person, if the commissioner finds either of the*  
4 *following:*

5 *(1) That the censure, suspension, or bar is in the public interest*  
6 *and that the person has committed or caused a violation of this*  
7 *division or rule or order of the commissioner, which violation was*  
8 *either known or should have been known by the person committing*  
9 *or causing it or has caused material damage to the finance lender,*  
10 *or to the public.*

11 *(2) That the person has been convicted of or pleaded nolo*  
12 *contendere to any crime, or has been held liable in any civil action*  
13 *by final judgment, or any administrative judgment by any public*  
14 *agency, if that crime or civil or administrative judgment involved*  
15 *any offense involving dishonesty, fraud, or deceit, or any other*  
16 *offense reasonably related to the qualifications, functions, or duties*  
17 *of a person engaged in the business in accordance with the*  
18 *provisions of this division.*

19 *(b) Within 15 days from the date of a notice of intention to issue*  
20 *an order pursuant to subdivision (a), the person may request a*  
21 *hearing under the Administrative Procedure Act (Chapter 4.5*  
22 *(commencing with Section 11400) of Division 3 of Title 2 of the*  
23 *Government Code). Upon receipt of a request, the matter shall be*  
24 *set for hearing to commence within 30 days after such receipt*  
25 *unless the person subject to this division consents to a later date.*  
26 *If no hearing is requested within 15 days after the mailing or*  
27 *service of such notice and none is ordered by the commissioner,*  
28 *the failure to request a hearing shall constitute a waiver of the*  
29 *right to a hearing.*

30 *(c) Upon receipt of a notice of intention to issue an order*  
31 *pursuant to this section, the person who is the subject of the*  
32 *proposed order is immediately prohibited from engaging in any*  
33 *activities subject to licensure under the law.*

34 *(d) Persons suspended or barred under this section are*  
35 *prohibited from participating in any business activity of a finance*  
36 *lender and from engaging in any business activity on the premises*  
37 *where a finance lender is conducting business.*

38 ~~SEC. 19.~~

39 *SEC. 13.* Section 22170 is added to the Financial Code, to read:

1 22170. (a) Notwithstanding any other provision of law, it is  
2 unlawful for any person to knowingly alter, destroy, mutilate,  
3 conceal, cover up, falsify, or make a false entry in any record,  
4 document, or tangible object with the intent to impede, obstruct,  
5 or influence the administration or enforcement of any provision  
6 of this division.

7 (b) Notwithstanding any other provision of law, it is unlawful  
8 for any person to knowingly make an untrue statement to the  
9 commissioner during the course of licensing, an investigation or  
10 examination.

11 (c) Any person who violates any provision of this section shall  
12 be liable for any administrative, civil, or criminal penalty  
13 authorized by law.

14 ~~SEC. 20. Section 23011.5 is added to the Financial Code, to~~  
15 ~~read:~~

16 ~~23011.5. (a) Notwithstanding Sections 23011 or any other~~  
17 ~~provision of law, the commissioner may issue an order suspending~~  
18 ~~or removing a subject person of a licensee from his or her office~~  
19 ~~with the licensee or from control of the licensee and prohibiting~~  
20 ~~the subject person from further participating in any manner in the~~  
21 ~~conduct of the business of the licensee, except with the prior~~  
22 ~~consent of the commissioner, if, after notice and opportunity for~~  
23 ~~a hearing, the commissioner finds the following:~~

24 ~~(1) (A) The subject person has violated any provision of this~~  
25 ~~division or of any regulation or order issued under this division,~~  
26 ~~or any provision of any other applicable law relating to the business~~  
27 ~~of a licensee; or~~

28 ~~(B) That the subject person has engaged or participated in any~~  
29 ~~unsafe or unsound act with respect to the business of the licensee;~~  
30 ~~or~~

31 ~~(C) The subject person has committed or engaged in any act~~  
32 ~~which constitutes a breach of his or her fiduciary duty as a subject~~  
33 ~~person; and~~

34 ~~(2) (A) The licensee has suffered or will probably suffer~~  
35 ~~substantial financial loss or other damage by reason of that~~  
36 ~~violation, act, or breach of fiduciary duty; or~~

37 ~~(B) The interests of the licensee's customers have been or are~~  
38 ~~likely to be seriously prejudiced by reason of the violation, act, or~~  
39 ~~breach of fiduciary duty; or~~



1     ~~(C) The subject person has received financial gain by reason of~~  
2     ~~that violation, act, or breach of fiduciary duty; and~~

3     ~~(3) The violation, act, or breach of fiduciary duty is one~~  
4     ~~involving personal dishonesty on the part of the subject person or~~  
5     ~~one that demonstrates a willful or continuing disregard for the~~  
6     ~~safety or soundness of the licensee's business.~~

7     ~~(b) The commissioner may issue an order suspending or~~  
8     ~~removing a subject person of a licensee from his or her office with~~  
9     ~~the licensee or from control of the licensee and prohibiting the~~  
10    ~~subject person from further participating in any manner in the~~  
11    ~~conduct of the business of the licensee, except with the prior~~  
12    ~~consent of the commissioner, if, after notice and opportunity for~~  
13    ~~a hearing, the commissioner finds the following:~~

14    ~~(1) The subject person's conduct or practice with respect to~~  
15    ~~another licensee or business institution has resulted in substantial~~  
16    ~~financial loss or other damage; and~~

17    ~~(2) The conduct or practice has evidenced personal dishonesty~~  
18    ~~or willful or continuing disregard for the safety and soundness of~~  
19    ~~the other licensee or business institution; and~~

20    ~~(3) The conduct or practice is relevant in that it demonstrates~~  
21    ~~unfitness to continue as a subject person of the licensee.~~

22    ~~(e) The commissioner may immediately issue an order~~  
23    ~~suspending or removing a subject person of a licensee from his or~~  
24    ~~her office with the licensee or from control of the licensee and~~  
25    ~~prohibiting the subject person from further participating in any~~  
26    ~~manner in the conduct of the business of the licensee, except with~~  
27    ~~the prior consent of the commissioner, if the commissioner finds~~  
28    ~~and provides the subject person notice of the following:~~

29    ~~(1) It is necessary for the protection of the licensee or the~~  
30    ~~interests of the licensee's clients that the commissioner issue the~~  
31    ~~order immediately; and~~

32    ~~(2) (A) Any of the factors set forth in paragraphs (1) and (2)~~  
33    ~~of subdivision (a) and any of the factors set forth in paragraph (3)~~  
34    ~~of subdivision (b) are true with respect to the subject person; or~~

35    ~~(B) Any of the factors set forth in paragraphs (1), (2), and (3)~~  
36    ~~of subdivision (b), and the factor set forth in paragraph (3) of~~  
37    ~~subdivision (b) are true with respect to the subject person.~~

38    ~~(d) (1) The commissioner may immediately issue an order~~  
39    ~~suspending or removing a subject person of a licensee from his or~~  
40    ~~her office with the licensee or from control of the licensee and~~

1 prohibiting the subject person from further participating in any  
2 manner in the conduct of the business of the licensee, except with  
3 the prior consent of the commissioner, if the commissioner finds  
4 and gives the subject person notice of the following:

5 (A) The subject person has been charged in an indictment issued  
6 by a grand jury or in an information, complaint, or similar pleading  
7 issued by a United States attorney, district attorney, or other  
8 governmental official or agency authorized to prosecute crimes;  
9 with a crime that is punishable by imprisonment for a term  
10 exceeding one year and that involves dishonesty or breach of trust;  
11 and

12 (B) The person's continuing to serve as a subject person of the  
13 licensee may pose a material threat to the interest of the licensee's  
14 clients or may threaten to materially impair public confidence in  
15 the licensee. In case the criminal proceedings are terminated other  
16 than by a judgment of conviction the order shall be deemed  
17 rescinded.

18 (2) The commissioner may immediately issue an order  
19 suspending or removing a subject person of a licensee or a former  
20 subject of a licensee, from his or her office with the licensee or  
21 from control of the licensee, and prohibiting the person from further  
22 participating in any manner in the conduct of the business of the  
23 licensee, except with the prior consent of the commissioner, if the  
24 commissioner finds and gives the subject person notice of the  
25 following:

26 (A) The person has been finally convicted of a crime that is  
27 punishable by imprisonment for a term exceeding one year and  
28 that involves dishonesty or breach of trust; and

29 (B) The person's continuing to serve or resumption of service  
30 as a subject person of the licensee may pose a material threat to  
31 the interests of the licensee's clients or may threaten to materially  
32 impair public confidence in the licensee.

33 (3) The fact that a subject person of a licensee charged with a  
34 crime involving dishonesty or breach of trust is not finally  
35 convicted of that crime shall not preclude the commissioner from  
36 issuing an order regarding the subject person pursuant to other  
37 provisions of this division.

38 (e) Within 30 days after an order is issued pursuant to  
39 subdivision (c) or (d), the person to whom the order is issued may  
40 file an application for a hearing.

1     ~~(f) Any person to whom an order is issued under subdivision~~  
2     ~~(a), (b), (c), or (d) may apply to the commissioner to modify or~~  
3     ~~revoke that order. The commissioner shall not grant that~~  
4     ~~application unless the commissioner finds that it is in the public~~  
5     ~~interest to do so and that it is reasonable to believe that the person~~  
6     ~~will, if and when he or she becomes a subject person of a licensee,~~  
7     ~~comply with all applicable provisions of the applicable law and~~  
8     ~~of any regulation or order issued thereunder.~~

9     ~~(g) (1) It is unlawful for any subject person of a licensee or~~  
10    ~~former subject person of a licensee to whom an order is issued~~  
11    ~~under subdivision (a), (b), (c), or (d) to do any of the following,~~  
12    ~~except with the prior consent of the commissioner, so long as the~~  
13    ~~order is effective:~~

14    ~~(A) To serve or act as a officer, director, 10 percent or more~~  
15    ~~shareholder, managing member, or general partner of any licensee.~~

16    ~~(B) To vote any shares or other securities of a licensee having~~  
17    ~~voting rights, for the election of any person as a director of a~~  
18    ~~licensee.~~

19    ~~(C) Directly or indirectly, to solicit, procure, or transfer or~~  
20    ~~attempt to transfer, or vote any proxy, consent, or authorization~~  
21    ~~with respect to any shares or other securities of any licensee having~~  
22    ~~voting rights.~~

23    ~~(D) Otherwise to participate in any manner in the conduct of~~  
24    ~~the business of any licensee.~~

25    ~~(2) Any person who violates paragraph (1) shall, upon~~  
26    ~~conviction, be punished by a fine of not more than ten thousand~~  
27    ~~dollars (\$10,000) or imprisoned in the state prison, or in a county~~  
28    ~~jail not to exceed one year, or by both such fine and imprisonment.~~

29    ~~(3) If the commissioner believes that any person has violated~~  
30    ~~paragraph (1), the commissioner may bring an action in a court of~~  
31    ~~competent jurisdiction petitioning the court to assess that person~~  
32    ~~a civil penalty in an amount as the commissioner may specify;~~  
33    ~~provided, however, that the amount of the civil penalty shall not~~  
34    ~~exceed two thousand five hundred dollars (\$2,500) for each~~  
35    ~~violation or, in the case of a continuing violation, two thousand~~  
36    ~~five hundred dollars (\$2,500) for each day for which the violation~~  
37    ~~continues.~~

38    ~~In determining the amount of a civil penalty to be assessed under~~  
39    ~~this paragraph, the court shall consider the financial resources and~~  
40    ~~good faith of the person charged, the gravity of the violation, the~~

1 history of previous violations by the person, and such other factors  
2 as in the opinion of the court may be relevant.

3 ~~(h) A hearing held pursuant to this section shall be private unless~~  
4 ~~the commissioner, in his or her discretion, after fully considering~~  
5 ~~the views of the parties, determines that a public hearing is~~  
6 ~~necessary to protect the public interest.~~

7 ~~(i) For purposes of this section, “subject person” means any~~  
8 ~~officer, director, 10 percent or more shareholder, managing~~  
9 ~~member, or general partner.~~

10 SEC. 14. *Section 23011.5 is added to the Financial Code, to*  
11 *read:*

12 23011.5. (a) *The commissioner may, after appropriate notice*  
13 *and opportunity for hearing, by order, censure or suspend for a*  
14 *period not exceeding 12 months, or bar from any position of*  
15 *employment, management, or control any deferred deposit*  
16 *originator, or any other person, if the commissioner finds either*  
17 *of the following:*

18 (1) *That the censure, suspension, or bar is in the public interest*  
19 *and that the person has committed or caused a violation of this*  
20 *division or rule or order of the commissioner, which violation was*  
21 *either known or should have been known by the person committing*  
22 *or causing it or has caused material damage to the deferred deposit*  
23 *originator, or to the public.*

24 (2) *That the person has been convicted of or pleaded nolo*  
25 *contendere to any crime, or has been held liable in any civil action*  
26 *by final judgment, or any administrative judgment by any public*  
27 *agency, if that crime or civil or administrative judgment involved*  
28 *any offense involving dishonesty, fraud, or deceit, or any other*  
29 *offense reasonably related to the qualifications, functions, or duties*  
30 *of a person engaged in the business in accordance with the*  
31 *provisions of this division.*

32 (b) *Within 15 days from the date of a notice of intention to issue*  
33 *an order pursuant to subdivision (a), the person may request a*  
34 *hearing under the Administrative Procedure Act (Chapter 4.5*  
35 *(commencing with Section 11400) of Division 3 of Title 2 of the*  
36 *Government Code). Upon receipt of a request, the matter shall be*  
37 *set for hearing to commence within 30 days after such receipt*  
38 *unless the person subject to this division consents to a later date.*  
39 *If no hearing is requested within 15 days after the mailing or*  
40 *service of such notice and none is ordered by the commissioner,*

1 *the failure to request a hearing shall constitute a waiver of the*  
2 *right to a hearing.*

3 *(c) Upon receipt of a notice of intention to issue an order*  
4 *pursuant to this section, the person who is the subject of the*  
5 *proposed order is immediately prohibited from engaging in any*  
6 *activities subject to licensure under the law.*

7 *(d) Persons suspended or barred under this section are*  
8 *prohibited from participating in any business activity of a deferred*  
9 *deposit originator and from engaging in any business activity on*  
10 *the premises where a deferred deposit originator is conducting*  
11 *business.*

12 ~~SEC. 21.~~

13 *SEC. 15.* Section 23015 is added to the Financial Code, to read:

14 23015. (a) Notwithstanding any other provision of law, it is  
15 unlawful for any person to knowingly alter, destroy, mutilate,  
16 conceal, cover up, falsify, or make a false entry in any record,  
17 document, or tangible object with the intent to impede, obstruct,  
18 or influence the administration or enforcement of any provision  
19 of this division.

20 (b) Notwithstanding any other provision of law, it is unlawful  
21 for any person to knowingly make an untrue statement to the  
22 commissioner during the course of licensing, an investigation or  
23 examination.

24 (c) Any person who violates any provision of this section shall  
25 be liable for any administrative, civil, or criminal penalty  
26 authorized by law.

27 ~~SEC. 22.~~

28 *SEC. 16.* Section 50123 of the Financial Code is amended to  
29 read:

30 50123. (a) A license shall remain in effect until suspended,  
31 surrendered, or revoked.

32 (b) A licensee that ceases to engage in the business regulated  
33 by this division and desires to no longer be licensed shall inform  
34 the commissioner in writing and, at that time, surrender the license  
35 and all other indicia of licensure to the commissioner. The licensee  
36 shall file a plan for the withdrawal from regulated business, and  
37 the plan shall include a timetable for the disposition of the business.  
38 The plan shall also include a closing audit performed by an  
39 independent certified public accountant or a review or other  
40 procedure prescribed by rule or order of the commissioner. Upon

1 receipt of the written notice and plan, the commissioner shall  
2 review the plan and, if satisfactory to the commissioner, shall  
3 accept the surrender of the license. A license is not surrendered  
4 until its tender is accepted in writing by the commissioner after a  
5 review, and a finding has been made on the licensee's plan required  
6 to be filed by this section, and a determination has been made that  
7 there is no violation of this law.

8 (c) A licensee may not surrender its license under this division  
9 and, under the authority of a real estate license, subsequently  
10 engage in residential mortgage lending or servicing activities that  
11 are subject to this division, unless the licensee has been licensed  
12 under this division for a period of five years or more.

13 ~~SEC. 23. Section 50318.5 is added to the Financial Code, to~~  
14 ~~read:~~

15 ~~50318.5. (a) Notwithstanding Section 50318 or any other~~  
16 ~~provision of law, the commissioner may issue an order suspending~~  
17 ~~or removing a subject person of a licensee from his or her office~~  
18 ~~with the licensee or from control of the licensee and prohibiting~~  
19 ~~the subject person from further participating in any manner in the~~  
20 ~~conduct of the business of the licensee, except with the prior~~  
21 ~~consent of the commissioner, if, after notice and opportunity for~~  
22 ~~a hearing, the commissioner finds the following:~~

23 ~~(1) (A) The subject person has violated any provision of this~~  
24 ~~division or of any regulation or order issued under this division,~~  
25 ~~or any provision of any other applicable law relating to the business~~  
26 ~~of a licensee; or~~

27 ~~(B) The subject person has engaged or participated in any unsafe~~  
28 ~~or unsound act with respect to the business of the licensee; or~~

29 ~~(C) The subject person has committed or engaged in any act~~  
30 ~~which constitutes a breach of his or her fiduciary duty as a subject~~  
31 ~~person; and~~

32 ~~(2) (A) The licensee has suffered or will probably suffer~~  
33 ~~substantial financial loss or other damage by reason of that~~  
34 ~~violation, act, or breach of fiduciary duty; or~~

35 ~~(B) The interests of the licensee's customers have been or are~~  
36 ~~likely to be seriously prejudiced by reason of the violation, act, or~~  
37 ~~breach of fiduciary duty; or~~

38 ~~(C) The subject person has received financial gain by reason of~~  
39 ~~that violation, act, or breach of fiduciary duty; and~~

1     ~~(3) The violation, act, or breach of fiduciary duty is one~~  
2     ~~involving personal dishonesty on the part of the subject person or~~  
3     ~~one that demonstrates a willful or continuing disregard for the~~  
4     ~~safety or soundness of the licensee's business.~~

5     ~~(b) The commissioner may issue an order suspending or~~  
6     ~~removing a subject person of a licensee from his or her office with~~  
7     ~~the licensee or from control of the licensee and prohibiting the~~  
8     ~~subject person from further participating in any manner in the~~  
9     ~~conduct of the business of the licensee, except with the prior~~  
10    ~~consent of the commissioner, if, after notice and opportunity for~~  
11    ~~a hearing, the commissioner finds the following:~~

12    ~~(1) The subject person's conduct or practice with respect to~~  
13    ~~another licensee or business institution has resulted in substantial~~  
14    ~~financial loss or other damage; and~~

15    ~~(2) The conduct or practice has evidenced personal dishonesty~~  
16    ~~or willful or continuing disregard for the safety and soundness of~~  
17    ~~the other licensee or business institution; and~~

18    ~~(3) The conduct or practice is relevant in that it demonstrates~~  
19    ~~unfitness to continue as a subject person of the licensee.~~

20    ~~(c) The commissioner may immediately issue an order~~  
21    ~~suspending or removing a subject person of a licensee from his or~~  
22    ~~her office with the licensee or from control of the licensee and~~  
23    ~~prohibiting the subject person from further participating in any~~  
24    ~~manner in the conduct of the business of the licensee, except with~~  
25    ~~the prior consent of the commissioner, if the commissioner finds~~  
26    ~~and provides the subject person notice of the following:~~

27    ~~(1) It is necessary for the protection of the licensee or the~~  
28    ~~interests of the licensee's clients that the commissioner issue the~~  
29    ~~order immediately, and~~

30    ~~(2) (A) Any of the factors set forth in paragraphs (1) and (2)~~  
31    ~~of subdivision (a) and any of the factors set forth in paragraph (3)~~  
32    ~~of subdivision (b) are true with respect to the subject person; or~~

33    ~~(B) Any of the factors set forth in paragraphs (1), (2), and (3)~~  
34    ~~of subdivision (b), and the factor set forth in paragraph (3) of~~  
35    ~~subdivision (b) are true with respect to the subject person.~~

36    ~~(d) (1) The commissioner may immediately issue an order~~  
37    ~~suspending or removing a subject person of a licensee from his or~~  
38    ~~her office with the licensee or from control of the licensee and~~  
39    ~~prohibiting the subject person from further participating in any~~  
40    ~~manner in the conduct of the business of the licensee, except with~~

1 the prior consent of the commissioner if the commissioner finds  
2 and gives the subject person notice of the following:

3 (A) The subject person has been charged in an indictment issued  
4 by a grand jury or in an information, complaint, or similar pleading  
5 issued by a United States attorney, district attorney, or other  
6 governmental official or agency authorized to prosecute crimes,  
7 with a crime that is punishable by imprisonment for a term  
8 exceeding one year and that involves dishonesty or breach of trust;  
9 and

10 (B) The person's continuing to serve as a subject person of the  
11 licensee may pose a material threat to the interest of the licensee's  
12 clients or may threaten to materially impair public confidence in  
13 the licensee. In case the criminal proceedings are terminated other  
14 than by a judgment of conviction the order shall be deemed  
15 rescinded.

16 (2) The commissioner may immediately issue an order  
17 suspending or removing a subject person of a licensee, or a former  
18 subject of a licensee, from his or her office with the licensee or  
19 from control of the licensee and prohibiting the person from further  
20 participating in any manner in the conduct of the business of the  
21 licensee, except with the prior consent of the commissioner, if the  
22 commissioner finds and gives the subject person notice of the  
23 following:

24 (A) The person has been finally convicted of a crime that is  
25 punishable by imprisonment for a term exceeding one year and  
26 that involves dishonesty or breach of trust; and

27 (B) The person's continuing to serve or resumption of service  
28 as a subject person of the licensee may pose a material threat to  
29 the interests of the licensee's clients or may threaten to materially  
30 impair public confidence in the licensee.

31 (3) The fact that a subject person of a licensee charged with a  
32 crime involving dishonesty or breach of trust is not finally  
33 convicted of that crime shall not preclude the commissioner from  
34 issuing an order regarding the subject person pursuant to other  
35 provisions of this division.

36 (e) Within 30 days after an order is issued pursuant to  
37 subdivision (c) or (d), the person to whom the order is issued may  
38 file an application for a hearing.

39 (f) Any person to whom an order is issued under subdivision  
40 (a), (b), (c), or (d) may apply to the commissioner to modify or



1 ~~revoke that order. The commissioner shall not grant that~~  
2 ~~application unless the commissioner finds that it is in the public~~  
3 ~~interest to do so and that it is reasonable to believe that the person~~  
4 ~~will, if and when he or she becomes a subject person of a licensee,~~  
5 ~~comply with all applicable provisions of the applicable law and~~  
6 ~~of any regulation or order issued thereunder.~~

7 ~~(g) (1) It is unlawful for any subject person of a licensee or~~  
8 ~~former subject person of a licensee to whom an order is issued~~  
9 ~~under subdivision (a), (b), (c), or (d) to do any of the following,~~  
10 ~~except with the prior consent of the commissioner, so long as the~~  
11 ~~order is effective:~~

12 ~~(A) To serve or act as a officer, director, 10 percent or more~~  
13 ~~shareholder, managing member, or general partner of any licensee.~~

14 ~~(B) To vote any shares or other securities of a licensee having~~  
15 ~~voting rights, for the election of any person as a director of a~~  
16 ~~licensee.~~

17 ~~(C) Directly or indirectly, to solicit, procure, or transfer or~~  
18 ~~attempt to transfer, or vote any proxy, consent, or authorization~~  
19 ~~with respect to any shares or other securities of any licensee having~~  
20 ~~voting rights.~~

21 ~~(D) Otherwise to participate in any manner in the conduct of~~  
22 ~~the business of any licensee.~~

23 ~~(2) Any person who violates paragraph (1) shall, upon~~  
24 ~~conviction, be punished by a fine of not more than ten thousand~~  
25 ~~dollars (\$10,000) or imprisoned in the state prison, or in a county~~  
26 ~~jail not to exceed one year, or by both such fine and imprisonment.~~

27 ~~(3) If the commissioner believes that any person has violated~~  
28 ~~paragraph (1), the commissioner may bring an action in a court of~~  
29 ~~competent jurisdiction petitioning the court to assess that person~~  
30 ~~a civil penalty in an amount as the commissioner may specify;~~  
31 ~~provided, however, that the amount of the civil penalty shall not~~  
32 ~~exceed two thousand five hundred dollars (\$2,500) for each~~  
33 ~~violation or, in the case of a continuing violation, two thousand~~  
34 ~~five hundred dollars (\$2,500) for each day for which the violation~~  
35 ~~continues.~~

36 ~~In determining the amount of a civil penalty to be assessed under~~  
37 ~~this paragraph, the court shall consider the financial resources and~~  
38 ~~good faith of the person charged, the gravity of the violation, the~~  
39 ~~history of previous violations by the person, and such other factors~~  
40 ~~as in the opinion of the court may be relevant.~~

1 ~~(h) A hearing held pursuant to this section shall be private unless~~  
2 ~~the commissioner, in his or her discretion, after fully considering~~  
3 ~~the views of the parties, determines that a public hearing is~~  
4 ~~necessary to protect the public interest.~~

5 ~~(i) For purposes of this section, “subject person” means any~~  
6 ~~officer, director, 10 percent or more shareholder, managing~~  
7 ~~member, or general partner.~~

8 ~~SEC. 24.~~

9 *SEC. 17.* Section 50512 is added to the Financial Code, to read:

10 50512. (a) Notwithstanding any other provision of law, it is  
11 unlawful for any person to knowingly alter, destroy, mutilate,  
12 conceal, cover up, falsify, or make a false entry in any record,  
13 document, or tangible object with the intent to impede, obstruct,  
14 or influence the administration or enforcement of any provision  
15 of this division.

16 (b) Notwithstanding any other provision of law, it is unlawful  
17 for any person to knowingly make an untrue statement to the  
18 commissioner during the course of licensing, an investigation or  
19 examination.

20 (c) Any person who violates any provision of this section shall  
21 be liable for any administrative, civil, or criminal penalty  
22 authorized by law.

23 ~~SEC. 25.~~

24 *SEC. 18.* No reimbursement is required by this act pursuant to  
25 Section 6 of Article XIII B of the California Constitution because  
26 the only costs that may be incurred by a local agency or school  
27 district will be incurred because this act creates a new crime or  
28 infraction, eliminates a crime or infraction, or changes the penalty  
29 for a crime or infraction, within the meaning of Section 17556 of  
30 the Government Code, or changes the definition of a crime within  
31 the meaning of Section 6 of Article XIII B of the California  
32 Constitution.